TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, [redacted] 1926

No. [redacted] 54

PAULINE ANDRE DE LA METTRIE AND GEORGE PRATT DE GASQUET JAMES, APPELLANTS,

vs.

ELIZABETH PRATT DE GASQUET JAMES, ~~THOMAS W. MILLER~~ Howard Sutherland, AS ALIEN PROPERTY CUSTODIAN, ET AL.

No. [redacted] 55

DAVID KEANE, RECEIVER, APPELLANT,

vs.

ELIZABETH PRATT DE GASQUET JAMES, ~~THOMAS W. MILLER~~ Howard Sutherland, AS ALIEN PROPERTY CUSTODIAN, ET AL.

APPEALS FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

FILED APRIL 7, 1926

(31,009, 31,010)

(31,009, 31,010)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 346

PAULINE ANDRE DE LA METTRIE AND GEORGE PRATT DE GASQUET JAMES, APPELLANTS,

vs.

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, ET AL.

No. 347

DAVID KEANE, RECEIVER, APPELLANT,

vs.

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, ET AL.

APPEALS FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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Court of Appeals of the District of Columbia.

No. 4137.

PAULINE ANDRE DE LA METTRIE et al., Appellants,

vs.

ELIZABETH PRATT DE GASQUET JAMES et al.

and

No. 4138.

DAVID KEANE, Receiver, Appellant,

vs.

ELIZABETH PRATT DE GASQUET JAMES et al.

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a Supreme Court of the District of Columbia.

In Equity.

No. 39090.

PAULINE ANDRE DE LA METTRIE and GEORGE PRATT DE GASQUET JAMES, Plaintiffs,

against

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, as Alien Property Custodian, and Frank White, as Treasurer of the United States, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Amended Bill.*

Filed July 20, 1921.

Supreme Court of the District of Columbia.

In Equity.

No. 39090.

PAULINE ANDRE DE LA METTRIE and GEORGE PRATT DE GASQUET JAMES, Plaintiffs,

against

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, as Alien Property Custodian, and Frank White, as Treasurer of the United States, Defendants.

To the Honorable Judges of the Supreme Court of the District of Columbia:

The above named plaintiffs, complaining of the above named defendants, for an Amended Complaint, aver and state:

1. That the plaintiffs were both born of American parents in the United States of America, but at present reside in Dinard, France, and have become citizens of the French Republic, the former by marriage to Vic Count de la Mettrie, a French citizen, and the latter by transfer of his allegiance to the French Republic during the late World War for military purposes but having been an American citizen at the time the judgment hereinafter mentioned was rendered in his favor, and that both of the plaintiffs and the husband of the first named, to wit, Henri de la Mettrie, served on the side of the Allies throughout the said War.

II. That upon information and belief, the defendant, Thomas W. Miller, is the Alien Property Custodian of the United States,
2 duly appointed by the President of the United States under and by virtue of the statute of the United States known as "Trading with the Enemy Act" approved October 6th, 1917, (C. 106, Sec. 17, 40 Stat. 411, 425) and that he was qualified for such office on March 16th, 1921.

III. Upon information and belief that the defendant, Frank White, is the Treasurer of the United States, duly appointed by the President of the United States by and with the consent of the Senate, being successor in such office of Guy F. Allen, who was the successor of John Burke as such Treasurer.

IV. That at the times hereinafter mentioned, the defendant, Elizabeth Pratt de Gasquet James, and now is a resident of the city of Trieste in Austria, and [illegible] was, adjudged by judgment of the United States District Court for the Eastern District of New York, dated February 14th, 1921 [illegible] entered in the Clerk's office of

said Court on the 16th day of February, 1921, in the case of Charles S. Aronstam against Elizabeth Pratt de Gasquet James, Francis P. Garvan, as Alien Property Custodian and another, to be an alien enemy as defined by the said Trading with the Enemy Act.

V. That a final decree and judgment of the Surrogates Court of Ulster County in the State of New York, a Court having jurisdiction of the said proceeding, and upon service of Citation and due appearance of all the parties thereto, In the Matter of the Judicial Settlement of the Accounts and Proceedings of Elizabeth Pratt de Gasquet James as Ancillary Executrix under the will of
3 Amadee de Gasquet James, deceased, and entered in the Surrogate's office of said Court in said County aforesaid on March 21st, 1915, which, among other things, Ordered, Adjudged and Decreed the said Elizabeth Pratt de Gasquet James, after being charged with deficiency of $253,756.98 upon her Account as Executrix as settled therein, and after turning over certain securities and property of the said estate, to pay to Pauline Andre de La Mettrie the sum of $69,754.85, and to George Watson Pratt de Gasquet James the sum of $69,754.85, and the sum of $44,492.43 to Victoire Louise de Libran, and to Hereward Von der Decken, and Elizabeth Bleeker Von der Decken or their Guardian, the sum of $34,877.43 each. Which said judgment, after appeals to the Appellate Division and the Court of Appeals of the State of New York was affirmed as modified and resettled in accordance with the judgment of the Court of Appeals of the State of New York by the said Surrogate's Court on November 3rd, 1917, and by decree entered in the office of said Surrogate on the said day and as so modified affirmed and resettled on the date aforesaid fixed and adjudged the amounts payable by the said Elizabeth Pratt de Gasquet James to the respective parties to the said proceedings, as their respective shares of the said deficiency, as follows:— Pauline Andre de la Mettrie, $65,133.25; George W. Pratt de Gasquet James, $65,133.25; Victoire Louise de Libran, $45,542.22; Hereward Von der Decken, $32,566.68; Elizabeth Bleeker Von der Decken, $32,566.68, with legal interest upon the said amounts from March 21st, 1915, and awarding judgment to each of them respectively against the
4 said Elizabeth Pratt de Gasquet James accordingly. That the judgment was duly docketed in the office of the Clerk of the City and County of New York on the 20th day of December, 1919, which was the County in which certain property hereinafter mentioned belonging to the said judgment-debtor Elizabeth Pratt de Gasquet James was situated and in the hands or under the control of the Farmers Loan & Trust Company of the City of New York at the time the said final judgment and decree was made and entered

VI. That on or about November 5th, 1918, while the plaintiffs herein were engaged in the military service in France, and while the Surrogates Court of Ulster County aforesaid retained jurisdiction of the said proceeding under the decision and decree, as modified and affirmed by the Court of Appeals, to enforce the said deficiency judgment under the provision of the New York Code of Civil Procedure (Old Section 2555) and of its said Decree and while the Plain-

tiffs were proceeding against the property of the Judgment Debtor in the State of New York, hereinafter referred to and within the jurisdiction of the Courts, the Alien Property Custodian, presuming to act in pursuance of the said Trading with the Enemy Act, seized and took into his possession certain property of the defendant Elizabeth Pratt de Gasquet James in the City of New York, then in the hands or under the control of the Farmers Loan & Trust Company of the City of New York, said seizure being announced in the public press on or about November 18th, 1919, together with the seizure of the properties of other alien enemies, as follows:

"Countess Elizabeth Pratt de Gasquet James Schloss
5 Ponovic bei Littni, Kram, Austria, formerly Elizabeth Pratt de Gasquet James of Esopus, Ulster County, New York, life estate in $135,000 under a voluntary trust made before marriage; bonds $590,000; bank balance $2,248.28."

And that since the seizure of the said property the said Farmers Loan and Trust Company has acted as the agent of the Alien Property Custodian in holding the principal of the said sequestered trust property to the credit of the Custodian, and also for the purpose of collecting the income upon the said trust fund, and transmitting it quarterly to the said Custodian, the last quarterly payment having been forwarded to him on March 4th, 1921, as plaintiffs are informed and believe, at which time the amount in the hands of the Alien Property Custodian was about the sum of $21,000.

VII. That executions upon the said judgment in favor of each of the plaintiffs herein were issued out of the Surrogates Court of Ulster County, New York, under its seal to the Sheriff of the City and County of New York, directing him to satisfy the judgment hereinabove described in favor of the plaintiffs herein out of the property of the said Elizabeth Pratt de Gasquet James within the County of New York, and made returnable into the said Surrogates Court, the first of said executions being dated October 18th, 1920, lodged with the Sheriff on October 22nd, 1920, and continuing with the reissuance of like executions down to the last execution dated February 26th, 1921, and lodged with the Sheriff March 4th, 1921, all of which executions were served upon the Farmers Loan & Trust Company and the Alien Property Custodian by the Sheriff, as plaintiffs are informed and believe have been returned by the
6 Sheriff unsatisfied.

VIII. That although plaintiffs are informed and believe that a large part of the property of the said judgment-debtor was actually in the City and County of New York at the time the said executions were outstanding in the hands of the Sheriff, the said Sheriff was prevented from levying upon any of the property of the judgment-debtor subject to levy, and the plaintiffs were prevented from instituting or taking any proceeding upon the return of the executions unsatisfied to reach the said property and subject it to the said executions or to the further orders of the Court, as in such cases made and provided under the statutory and common law of the State of New York, or otherwise proceed in the enforcement of

their said judgment by reason of the restraining provisions of the Trading with the Enemy Act, Section 9, subdivision (*f*) as amended June 5th, 1921.

IX. That the sequestration of the property of the defendant Elizabeth Pratt de Gasquet James, aforesaid, under the said Trading with the Enemy Act, and the restraining provision of Section 9, subdivision (*f*) have prevented the plaintiffs from obtaining satisfaction of their judgment out of the property of the said Elizabeth Pratt de Gasquet James, in said State by the legal methods provided by the laws of the State of New York, and that she has employed the said Trading with the Enemy Act to give a preference to an unliquidated claim in favor of her former attorney by confession of judgment to him for $5,000, and its attempted satisfaction over the heads of the plaintiffs as prior judgment creditors, and to enable her,
7 among other things, to secure the payment of the balance of the said fund, under the control of the said Treasurer and Custodian, to her in such manner as to avoid the proceedings of the plaintiffs to satisfy their said judgment in the City and County of New York where the property was located at the time the same was sequestered by the Alien Property Custodian, as aforesaid.

X. That this is a suit in equity to establish the claim arising out of the said judgment due to the plaintiffs from the said Elizabeth Pratt de Gasquet James, and for the satisfaction of the same out of the property sequestered by the Alien Property Custodian and in his hands and in the hands of the Treasurer of the United States pursuant to the provisions of Section 9 of the Trading with the Enemy Act, and for all or any of the relief prayed for herein which the Court may deem just to grant.

XI. Upon information and belief that the said moneys were deposited in pursuance of Trading with the Enemy Act in the Treasury of the United States or under the control of the said Treasurer in whole or in part, and that the securities or other property seized by the Custodian are also in the possession of the Treasurer or the Alien Property Custodian.

XII. Upon information and belief that money and property of the said judgment-debtor Elizabeth Pratt de Gasquet James, seized and sequestered by the Alien Property Custodian as aforesaid, is still in the possession or under the control of either the Treasury Department of the United States or the Alien Property Custodian.

XIII. That on or about April 22nd, 1920, the plaintiffs
8 filed their respective verified claims under the said judgment with the Alien Property Custodian and on or about May 29th, 1920, duly filed their applications with the Custodian for allowance of the same under Section 9 of the "Trading with the Enemy Act" and that the same were disallowed on or about July 29th, 1920, upon the ground that the Republic of France had not accorded reciprocal rights to American citizens as to alien enemy property sequestered by that Government. That upon subsequent advices from the French Government conveyed to the American Department of State that such reciprocal privileges had been granted by it, such being the fact, the claims were again resubmitted and applications renewed to

the President for the allowance of the same and were on May 1921, disallowed. And that the plaintiffs' claims have both been passed upon and disallowed by the Alien Property Custodian and the President and this suit is accordingly brought upon the same under the provision to the Trading with the Enemy Act, Section 9, for the relief prayed for herein. That the plaintiffs are jointly interested in the allowance of the said claims and the distribution of the said fund and property in the hands of the Custodan and Treasurer between them equally to the extent of their said judgments and interest.

Wherefore, Plaintiffs pray that it be decreed that the sum of $65,133.25 with interest from March 21st, 1915, is now due to each of the plaintiffs herein from the defendant, Elizabeth Pratt de Gasquet James upon the decree and judgment secured against her in the Surrogate's Court of Ulster County in the State of New
9 York, on March 21st, 1915, and recorded in the office of the said Surrogate in said Ulster County on said date, a transcript of which was duly docketed in the office of the Clerk of the Supreme Court and of the County of New York on the 20th day of December, 1919: and that they have judgment of this Court therefor. And that the Alien Property Custodian and the Treasurer of the United States, or the successors in office be directed to pay out of any money in their possession, which was or is the property of the defendant, Elizabeth Pratt de Gasquet James, to each of the Plaintiffs a sum sufficient to satisfy the said judgments as to each of them, or in so far as the money or property which was or is the money or property of the said defendant James in the possession or under the control of the said Custodian or Treasurer is sufficient to satisfy the same, share and share alike. And until there shall be a determination of Plaintiffs' claims or cause of action in the premises, that the said Alien Property Custodian and the Treasurer of the United States retain in their possession all of the money or property which was or is the money or property of the said Elizabeth Pratt de Gasquet James up to the amount of the said judgment for the payment to the Plaintiffs of their said claim or claims, together with interest and costs; or in the alternative that the Alien Property Custodian of the United States and the Treasurer of the United States, defendants herein, be Ordered and Decreed to return the property and funds sequestered or held by them as the property of Elizabeth Pratt de Gasquet James to the Farmers Loan & Trust Company, Trustee, or otherwise of the City of New York and such other person or persons by
10 whom said property was conveyed, transferred, assigned, delivered or paid over to the Alien Property Custodian; and that the plaintiffs have such other and further relief in the premises as may be just and equitable.

Wherefore, Plaintiffs now pray that a writ of subpœna issue herein, directed to the above named defendants, and each of them, commanding them on a certain day to appear and answer the bill of complaint.

CHARLES HENRY BUTLER,
JOHN A. KRATZ,
Plaintiffs' Solicitors.

UNITED STATES OF AMERICA,
State & County of New York, ss:

J. Noble Hayes, being duly sworn, deposes and says that he is an attorney and counselor at law, residing and having an office in the City, County and State of New York, and that he is also the attorney in fact, by duly executed power of attorney of Pauline Andre de le Mettrie and George Pratt de Gasquet James, the plaintiffs in the above entitled action; that he has read the foregoing declaration and knows the contents thereof and that the same are true of his own knowledge except as to those matters therein alleged on information and belief and as to those matters, he believes them to be true; that the sources of his information and the grounds of his belief are his complete familiarity with the transactions referred to, in which he has personally participated, and communications received
11 by him orally and in writing from the plaintiffs; that the reason why this verification is made by deponent and not by the plaintiffs is that neither of the said plaintiffs are now within the United States.

J. NOBLE HAYES.

Subscribed and sworn to before me this 18" day of July, 1921.
D. H. PULVERMACHER,
Notary Public, Kings County, No. 162.

Certificate filed in New York County No. 47.
Kings County Register's No. 3341.
New York County Register's No. 3046.
Commission Expires March —, ——.

Form 2. No. 66356. Series B.

STATE OF NEW YORK,
County of New York, ss:

I. William F. Schneider, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county,

Do hereby certify, That said Court is a Court of Record, having by law a seal; that D. H. Pulvermacher whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed instrument was at the time of taking the same a Notary Public acting in and for said county, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's Office of the County of New York a certified copy of his appointment and qualification as Notary Public for the County of Kings with his autograph signature; that as such Notary Public, he was duly authorized by the laws of the State of New York to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this state; and further, that I

am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 19 day of July 1921.

[SEAL.] WM. F. SCHNEIDER,
Clerk.

Fiat.

Leave to file amended petition granted.

A. A. HOEHLING,
7/20/21. *Justice.*

12 *Motion to Dismiss Amended Bill of Complaint.*

Filed August 18, 1921.

* * * * * * *

Now come the defendants Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, by their attorney, Peyton Gordon, Attorney of the United States in and for the District of Columbia, and, appearing specially for that purpose, and none other, severally move to dismiss the amended bill of complaint exhibited against them in this cause, and assign as ground therefor the following:

I.

That said amended bill of complaint fails to allege affirmatively upon its face that the debt therein sought to be established arose with reference to the money or other property held by the Alien Property Custodian or the Treasurer of the United States for the account of the enemy defendant, Elizabeth Pratt de Gasquet James.

Wherefore, these defendants pray that said amended bill of complaint be dismissed.

PEYTON GORDON,
Attorney of the United States in and for the District of Columbia, Attorney for the Defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States.

13 Messrs. Chas. H. Butler and John A. Kratz,
Attorneys for Plaintiffs,
1537 I Street N. W.,
Washington, D. C.

SIRS:

Please take notice that the foregoing motion to dismiss the amended bill of complaint herein will be called to the attention of the Court on Wednesday, the seventh day of September, 1921, at the opening of the Court, or as soon thereafter as counsel can be heard.

PEYTON GORDON,
Attorney of the United States in and for the District of Columbia, Attorney for Defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States.

Service of copy of the foregoing motion and notice acknowledged this — day of August, A. D. 1921.

BUTLER & KRATZ,
By JOHN A. KRATZ,
Attorneys for Plaintiffs.

Aug. 18/21.

14 *Answer of Thomas W. Miller and Frank White.*

Filed October 18, 1921.

* * * * * * *

Now come the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, separately and severally answering the bill of complaint, and as their separate and several answers say:

(1) That they have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered I of the bill of complaint, and therefore demand strict proof thereof;

(2) They admit the averments of paragraph numbered II of the bill of complaint;

(3) They admit the averments of paragraph numbered III of the bill of complaint;

(4) Answering the averments of paragraph numbered IV of the bill of complaint these defendants say that they have no knowledge or information sufficient to form a belief with respect to the residence of the defendant Elizabeth Pratt de Gasquet James, and therefore demand strict proof thereof.

Further answering said paragraph these defendants say that the allegation that the said Elizabeth Pratt de Gasquet James was adjudged by judgment of the United States District Court for the East-

ern District of New York, dated February14, 1921, and entered in the Clerk's office of said Court on the 16th day of February, 1921, in the case of Charles S. Aronstam v. Elizabeth Pratt de Gasquet James, Francis P. Garvan, as Alien Property Custodian, and another
15 to be an enemy as defined by the said Trading with the Enemy Act, is immaterial, irrelevant, inconsequential, and impertinent, in so far as this proceeding is concerned, and these defendants pray that the same may be stricken from the bill of complaint. In so far as this court may find that said allegations are material, these defendants deny that such an adjudication was made by the said court and say that any expressions by the court as to the enemy character of the said defendant were obiter dicta and did not constitute an adjudication or determination.

(5) They have no knowledge or information sufficient to form a belief with respect to paragraph numbered V of the bill of complaint, and therefore demand strict proof thereof;

(6) Answering the averments of paragraph numbered VI of the bill of complaint, these defendants say that the Alien Property Custodian, acting under and pursuant to the terms and provisions of the Trading with the Enemy Act, the amendments thereto, and the proclamations and executive orders issued thereunder, after investigation determined that Elizabeth Pratt de Gasquet James was an enemy within the purview and meaning of the said Act, the amendments thereto, and the proclamations and executive orders issued thereunder, and that certain money and other property were owing or belonged to, held for, by, on account of, or for the benefit of the said enemy. Thereupon the Alien Property Custodian required that the said money and other property be conveyed, transferred, assigned, delivered, and/or paid to him, to be held, administered and accounted for as provided by law, and the said requirement of the Alien Property Custodian was duly and fully
16 complied with. Subsequent to the said receipt the Alien Property Custodian, acting pursuant to law, paid over to the Treasurer of the United States the money received by him, and there is now in the hands of the Alien Property Custodian and the Treasurer of the United States a large amount of money and other property required to be transferred to the Alien Property Custodian as aforesaid.

Further answering said paragraph, these defendants say that the determination of enemy character and of the ownership of the said property by the said Elizabeth Pratt de Gasquet James is not final for the purposes of this suit and the plaintiffs herein must offer proof and this court must determine out of what, if any, of the said money and other property any claims which these plaintiffs may establish may be paid.

Further answering the said paragraph, these defendants say that at the proper time in this proceeding they will file in this court a complete and accurate accounting of all the money and other property required to be conveyed, transferred, assigned, delivered, and/or paid to the Alien Property Custodian as the property of Elizabeth

Pratt de Gasquet James to the end that a just and equitable decree may be rendered herein.

Except as specifically answered heretofore these defendants say that each and every other allegation in paragraph numbered VI of the bill of complaint is immaterial and impertinent to this cause of action, and these defendants are not required to answer the same.

In so far as this court may find the said allegations relevant
17 or pertinent, these defendants say that they have no knowledge or information sufficient to form a belief with respect thereto, and therefore demand strict proof thereof;

(7) They have no knowledge or information sufficient to form a belief with respect to paragraph numbered VII of the bill of complaint, and therefore demand strict proof thereof;

(8) Answering the averments of paragraph numbered VIII of the bill of complaint, these defendants say that the averments of fact contained therein are immaterial, irrelevant and impertinent, and these defendants are not required to answer the same. In so far as this court may find that any or all of the said averments are material, these defendants say that they have no knowledge or information sufficient to form a belief with respect thereto, and therefore demand strict proof thereof;

(9) Answering the averments of paragraph numbered IX of the bill of complaint, these defendants say that the same are immaterial, irrelevant, impertinent and inconsequential and these defendants are not required to answer the same. In so far as this court may find that the said averments are material, these defendants say that they have no knowledge or information sufficient to form a belief with respect to the averments of fact alleged therein, and therefore demand strict proof thereof;

(10) The averments of paragraph numbered X of the bill of complaint are statements of law which these defendants are not required to answer;

(11) Answering the averments of paragraph numbered XI of the bill of complaint, these defendants refer to their answer to
18 paragraph numbered VI of the bill of complaint and pray that the same may be incorporated herein as if set forth in full as their answer to paragraph numbered XI of the bill of complaint;

(12) Answering the averments of paragraph numbered XII of the bill of complaint, these defendants refer to their answer to paragraph numbered VI of the bill of complaint, and pray that the same may be incorporated herein as if set forth in full as their answer to paragraph numbered XII of the bill of complaint;

(13) Answering the averments of paragraph numbered XIII of the bill of complaint, these defendants admit that the plaintiff herein filed a notice of his claim with the Alien Property Custodian pursuant to Section 9 of the Trading with the Enemy Act. They admit that the plaintiffs herein filed an application for the executive allowance of their claims, and that the application for executive allowance was acted on unfavorably to the plaintiffs herein and their claims were disallowed.

Answering the averments of said paragraph with respect to the reasons as to why the application of the plaintiffs herein for executive allowance of their claims was unfavorably acted upon to the plaintiffs, these defendants say that such allegations are immaterial, irrelevant and impertinent, and these defendants are not required to answer the same.

Further answering the said paragraph, these defendants deny that the Republic of France extends to a citizen of the United States such reciprocal rights as are required by Section 9 (*e*) of the
19 Trading with the Enemy Act.

Further separately and severally answering each and every allegation of the bill of complaint, these defendants separately and severally say:

That this court is without jurisdiction of the subject matter of this suit because:

(1) The debt sought to be recovered by the plaintiffs herein was neither owing to nor owned by the plaintiffs prior to October 6, 1917; and

(2) The plaintiffs are not citizens of the United States and the debt which they are seeking to recover did not arise with reference to the money or other property held by the Alien Property Custodian or the Treasurer of the United States as required by Section 9 (*e*) of the Trading with the Enemy Act.

Wherefore these defendants having fully answered the bill of complaint, pray that they be dismissed with their costs in this behalf expended.

THOS. W. MILLER,
Alien Property Custodian.
FRANK WHITE,
Treasurer of the United States.

PEYTON GORDON,
Attorney of the United States in and for the District of Columbia.

20 DISTRICT OF COLUMBIA, *ss:*

Thomas W. Miller, being first duly sworn, upon oath deposes and says that he is Alien Property Custodian of the United States of America; that he has read the foregoing answer by him subscribed and knows the contents thereof; that the matters and things therein stated as of his personal knowledge are true, and those stated as upon information and belief he believes to be true.

THOS. W. MILLER.

Subscribed and sworn to before me this 18 day of October, A. D. 1921.

[SEAL.]

ODEN B. GRAY,
Notary Public.

DISTRICT OF COLUMBIA, *ss:*

Frank White, being first duly sworn, upon oath deposes and says that he is Treasurer of the United States of America; that he has read the foregoing answer by him subscribed and knows the contents thereof; that the matters and things herein stated as of his personal knowledge are rue, and those stated as upon information and belief he believes to be true.

FRANK WHITE.

Subscribed and sworn to before me this 18th day of October, A. D. 1921.

[SEAL.] ELLA F. VAN ZANDT.

21 *Order Denying Motion to Dismiss.*

Filed October 20, 1921.

* * * * * * *

The motion to mismiss in this cause coming on to be heard this fifth day of October, 1921, and the parties thereto having been orally heard on said motion, it is this fifth day of October, 1921, hereby ordered, adjudged and decreed that the motion to dismiss be, and the same hereby is, overruled, with leave to the defendants to answer within ten days.

A. A. HOEHLING,
Justice.

22 *Answer of Elizabeth Pratt de Gasquet James.*

Filed November 22, 1921.

* * * * * * *

The defendant, Elizabeth Pratt de Gasquet James, for her answer to the amended bill of complaint of the plaintiffs states:

I. She admits that both the plaintiffs reside in and are citizens of the Republic of France, as alleged in paragraph one of said amended complaint. This defendant has no knowledge as to the allegation of said paragraph that the plaintiff, George Pratt de Gasquet James, was an American citizen at the time the judgment in said bill of complaint mentioned was rendered in his favor.

II. She admits the allegations of paragraph two of said complaint.

III. She admits the allegations of paragraph three of said complaint.

IV. She denies that she was or is a resident of the City of Trieste in Austria, as alleged in paragraph four of said amended complaint. She denies that she was adjudged to be an alien enemy as defined by the Trading with the Enemy Act, as alleged in paragraph four of said amended complaint, but, on the contrary, alleges that the

only effect of said judgment in that respect was to establish her status as a technical enemy on account of being in territory of an enemy or of an ally of an enemy so that the seizure of her property by the Alien Property Custodian was justified, but she alleges that at the time her property was seized by the Alien Property Cus-
23 todian, and that she is now a citizen of the United States of America. She is now residing in Dinard, France.

V. She admits, except as otherwise set forth in this paragraph of her answer, the material allegations of paragraph five of the said amended bill of complaint, but states that the subject of the proceeding in which said judgments were rendered was the estate of her former husband, Amadee de Gasquet James, of whose estate she was executrix; that it was not the property of this defendant, nor was it in any way connected with the property of this defendant which was seized by the Alien Property Custodian, as set out in said amended complaint. This defendant denies that the capital of the trust fund mentioned in said bill of complaint was, on the 3rd day of November, 1917, or at any time subsequently to the 14th day of October, 1887, the property of this defendant.

VI. Defendant admits that on or about May 29th, 1918, the Alien Property Custodian of the United States, acting under authority of law, seized and took into his possession certain property of this defendant which was then in the hands or under the control of The Farmers' Loan and Trust Company, of the City of New York, and that since the seizure of said property said The Farmers' Loan and Trust Company has acted as agent of the Alien Property Custodian in holding the principal of said sequestered property (but not including the principal of said trust fund which was not sequestered) to the credit of the Custodian and has collected the income accruing on said trust fund and has transmitted it to the said Alien Property Custodian, and that she believes the amount of her said
24 property now in the hands of the Alien Property Custodian is about or in excess of $21,000, and she denies all the other allegations contained in said paragraph. She further states that her property which was seized by the Alien Property Custodian, as aforesaid, and which is now held by the Alien Property Custodian, with the exception of certain bonds appraised at $590, consists entirely of money derived as income from her life interest in and to a certain trust fund created from property belonging to herself, and which never belonged to her deceased husband Amadee de Gasquet James, by a certain trust deed executed by her on October 14, 1887, to the said The Farmers' Loan and Trust Company; that the claim which the plaintiffs are now asserting did not arise with reference to said voluntary trust fund or to the income of the same, which is the property of this defendant and is now held by the Alien Property Custodian, nor with reference to said bonds. On the contrary, that the claim which is now asserted arose with reference to the property of the former husband of this defendant, namely, the estate of Amadee de Gasquet James.

VII. This defendant has no knowledge as to the truth of the allegations contained in paragraph seven of the amended complaint, and therefore denies the same in so far as they may be material.

VIII. Defendant for want of knowledge denies the allegations of paragraph eight of the amended complaint, except in so far as said paragraph alleges that the property of this defendant in the hands of the Alien Property Custodian was not subject to execution or seizure on the said judgment of the Surrogate's Court, by reason of the express provisions of the Trading with the Enemy Act; this is admitted. But she denies that any property at any time held by the said The Farmers' Loan and Trust Company for, or for the benefit of, this defendant, could under the laws of the State of New York, have been levied upon under any execution issued out of any court or by any official, except the said bonds aforesaid which were appraised at $590.

IX. She denies each and every allegation contained in paragraph nine of the amended bill of complaint, as therein alleged, except as admitted by the preceding paragraph VIII of this answer.

X. She admits the allegations of paragraph twelve of said amended complaint, except so far as payments have been made out of the money by virtue of a judgment entered in the United States District Court for the Eastern District of New York on or about the 14th day of February, 1921, in favor of Charles S. Aronstam against Elizabeth Pratt de Gasquet James, Francis P. Garvan, as Alien Property Custodian, and John Burke, as Treasurer of the United States.

XI. She denies that the claims filed by plaintiffs with the Alien Property Custodian, as alleged in paragraph thirteen of the amended complaint, were disallowed upon the ground that the Republic of France had not accorded reciprocal rights to American citizens as to alien enemy property sequestered by that Government, but on the contrary states that said claims were rejected for the sole reason that they did not arise with reference to the money or other property held by the Alien Property Custodian or the Treasurer of the United States as the property of this defendant. She is not advised whether or not the French Government has accorded such reciprocal rights to American citizens and therefore denies this allegation of paragraph thirteen of said amended complaint. She admits that the plaintiffs did file their respective claims with the Alien Property Custodian and the same were disallowed on July 29, 1920, and again on May —, 1921.

Defendant therefore prays that the amended bill of complaint as against her may be dismissed, and for such other relief as she may be entitled.

FRANK DAVIS, JR.,
S. M. STELLWAGEN,
Munsey Bldg., Washington, D. C.;
FREDERICK GELLER,
22 Exchange Place, New York City,
Attorneys for Elizabeth Pratt de Gasquet James.

UNITED STATES OF AMERICA,
State and County of New York, ss:

Frederick Geller, being first duly sworn, says that he is an attorney and counsellor at law residing in Bronxville, New York, and having an office in the City and County and State of New York; that he is one of the attorneys of Elizabeth Pratt de Gasquet James, one of the defendants in the above entitled action; that the said Elizabeth Pratt de Gasquet James is absent from the District of Co-
27 lumbia and from the United States of America, being at present in Dinard, France, and that the facts stated and allegations contained in the foregoing answer of said Elizabeth Pratt de Gasquet James are true as affiant verily believes.

FREDERICK GELLER.

I hereby certify that the above affidavit was sworn to before me by said Frederick Geller, and by him signed in my presence this 18th day of November, 1921.

[SEAL.]

B. H. BECKER,
Notary Public, Bronx County, No. 74.

Bronx County Register's No. —.
New York County Clerk's No. 263.
New York County Register's No. 3299.
Commission expires March 30, 1923.

Memorandum of Court.

Filed December 5, 1923.

* * * * * * *

Mr. Justice Hoehling has informed me that there is no reason why this case should not be decided without giving any consideration to his ruling on the demurrer. Consequently it is decided as indicated upon final hearing and a decree may be entered accordingly.

Settle decree on notice.

WALTER I. McCOY,
Chief Justice.

28 *Final Decree.*

Filed December 17, 1923.

* * * * * * *

This cause coming on to be heard at this term of this Court upon the bill of complaint filed herein, the answer of Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, and the answer of Elizabeth Pratt de Gasquet James and evidence having been submitted to the Court and the argu-

ments of counsel having been heard, and the Court having taken time to consider, it is by the Court this 17th day of December, 1923,

Adjudged, ordered and decreed that the bill of complaint be and the same hereby is dismissed, and it is further

Adjudged, ordered and decreed that the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, and the defendant Elizabeth Pratt de Gasquet James, recover their costs in this behalf expended, and that they have execution for the same as at law.

WALTER I. McCOY,
Chief Justice Supreme Court of the District of Columbia.

From the foregoing decree the plaintiffs, in open court, note an appeal to the Court of Appeals of the District of Columbia, which appeal is allowed, and the penalty of the undertaking for costs thereon is fixed at one hundred dollars or in lieu thereof a cash deposit of fifty dollars.

WALTER I. McCOY, *C. J.*

Memorandum.

December 19, 1923.—$50 deposited by plaintiffs in lieu of appeal bond.

Assignments of Error.

Filed January 10, 1924.

* * * * * * *

The Plaintiffs herein make the following Assignments of Error to the Final Decree and Judgment appealed from:

1. The Trial Court erred in holding that the plaintiffs' claims to recover the amount of the judgments with interest out of the sequestered property of the defendant, Elizabeth Pratt de Gasquet James, judgment-debtor, and for other relief, do not arise with reference to the said sequestered money or property in the hands or under the control of the Alien Property Custodian and the Treasurer of the United States, within the meaning of the Trading with the Enemy Act as amended June 5th, 1920.

2. The Trial Court erred in holding in effect that to entitle the plaintiffs to any of the relief prayed for it should have been shown, but was not shown, that there was a specific lien upon the money or property, such as a vendor's lien, a lien created by pledge or mortgage, either specific or equitable, or by Statute, to bring the case within the provisions of the Trading with the Enemy Act, Section 9 (e) as amended by the law of June 5th, 1920.

3. The Court erred in holding in effect that the rights of the plaintiffs as judgment-creditors of the judgment-debtor, Elizabeth Pratt de Gasquet James, under the laws of the State of New York, upon

the facts alleged in the Bill of Complaint, to collect their judgment out of the assets of the judgment-debtor in the State of New York, and to prevent the removal of these assets by her from said State to prevent the collection of their said judgments out of such property were not remedies which gave such security for the said judgment as attached to the property in the hands of the Alien Property Custodian, so that within the meaning of the Trading with the Enemy Act, the debt of claim arose with reference to the money or property held by the Custodian.

4. The Trial Court erred in holding that there is no reason why this case should not be decided without giving any consideration to the order overruling the demurrer of the defendant Custodian and Treasurer.

5. The Trial Court erred in holding that as a fact while a citizen of an allied or neutral power has exactly the same rights in the French Courts as a Frenchman has, to that extent, there is reciprocity, such as is required by the Trading with the Enemy Act, Section 9, subdivision (e), but that there isn't any reciprocity as to the particular thing under consideration in the instant case, and there was, therefore, no jurisdiction in the Supreme Court of the District of Columbia to decree the relief prayed for as to
31 either of the Plaintiffs, and in effect holding that the Government of France did not *extend* full reciprocal rights to American citizens in the Court of the French Republic to those granted to French citizens in the Courts of the United States, in respect to claims against sequestered property in the hands of such Government by the Trading with the Enemy Act.

6. That the Trial Court erred in excluding the certified copy of a communication received by the State Department and under the signature and seal of the Secretary of State from the French Government through the French Embassy at Washington dated the 11th day of December, 1922, with a translation by the State Department (Plaintiffs' Exhibit 11 for identification.)

7. That the Trial Court erred in denying a motion to amend the bill of Complaint for the purpose of adding the said David Keane, Receiver, under the order of the Supreme Court of the State of New York, as a co-defendant herein.

8. The Court erred in excluding, without examination by the Court, or allowing the same to be marked, and refusing to allow them even to be offered in evidence, the documents produced in Court by the Attorney General under stipulation with Plaintiffs' counsel, in lieu of the service of a subpœna duces tecum as follows: (*a*) the claim filed by the defendant James with the Custodian on or about December 24th, 1920; (*b*) all the papers produced in Court from the files of the Custodian's and Attorney-General's offices under the stipulation, and contained in a bundle; (*c*) all copies of let-
32 ters addressed and sent to the Alien Property Custodian or Treasurer of the United States relating to these claims filed by the defendant James, which were produced in Court under stipulation with him.

9. The Court erred in refusing to allow the Assistant Deputy Attorney General, who produced the above mentioned papers in Court, and had them in his possession, to be sworn as a witness when called by Plaintiffs' counsel to the stand.

10. The Court erred in excluding Section 1172 of the Penal Law of the State of New York offered by the Plaintiffs in evidence.

11. The Court erred in excluding Sections 2554, 2553 and 2458 of the Code of Civil Procedure of the State of New York, offered by the Plaintiffs in evidence.

12. The Court erred in excluding Sections 2432, 2435, 2437 and 2441 of the Code of Civil Procedure of the State of New York.

13. The Court erred in excluding Sections 1871-1879 of the Code of Civil Procedure of the State of New York relating to judgment-creditors' action.

14. The Court erred in excluding Sections 550, 551 and 552 of the Code of Civil Procedure of the State of New York referring to arrest in civil cases.

15. The Court erred in excluding the certified copy of the judgment of the U. S. District Court of the Eastern District of New York in the case of Charles S. Aronstam vs. Elizabeth Pratt de Gasquet James, the Alian Property Custodian and Treasurer of the United States. (Plffs.' Exhibit 13 for Identification.)

16. The Court erred in excluding the Account of the de-
33 fendant James, filed in the Surrogate's Court of Ulster County, New York, on April 13th, 1913, which is the basis of the Plaintiffs' judgment upon which this present claim in this suit is based.

17. The Court erred in refusing to allow Plaintiffs' exhibit 12, a statement of the property in the hands of the Custodian on January 3rd, 1921, Income, and "Amount to be returned" previously produced by the Attorney General offered in evidence by the Plaintiffs, received and marked "Exhibit 12, J. B. C." And in refusing to allow the Deputy Assistant Attorney General, who produced the same, to be examined under oath in Court as to the same.

18. The Court erred in holding in effect that the plaintiffs have not set forth and proven facts sufficient to entitle them to the equitable relief as prayd for.

19. The Court erred in dismissing the Bill of Complaint.

20. The Court erred in entering judgment dismissing the Complaint herein with costs.

J. NOBLE HAYES,
GUY H. JOHNSON,
Attorneys for Appellants.

Memoranda.

January 21, 1924.—Time to submit statement of evidence extended to February 19, 1924.

34 February 11, 1924.—Statement of evidence submitted, signed and filed.

Designation of Record on Appeal.

Filed February 11, 1924.

* * * * * * *

To the Clerk of the Supreme Court of the District of Columbia.

SIR:

Please prepare record for filing in the Court of Appeals of the District of Columbia in the above-entitled cause and include the following papers:

1. Amended bill.
2. Motion to dismiss amended bill.
3. Order denying motion to dismiss.
4. Answer of defendants Thomas W. Miller, Allen Property Custodian, and Frank White, Treasurer of the United States.
5. Answer of defendant Elizabeth Pratt de Gasquet James.
6. Memorandum decision of Court (December 5, 1923).
7. Final decree dismissing bill.
8. Allowance of appeal.
9. Note of deposit in lieu of bond on appeal.
10. Assignment of Error.
11. Order extending time for submission of statement of evidence.
12. Note of submission, signing and filing of Statement of Evidence.

35 13. This designation of record.

J. NOBLE HAYES,
Attorney for Plaintiffs.

Messrs. Frank Davis, Jr., S. M. Stellwagen, William J. Neale, Frederick Geller, Attorneys for Defendant Elizabeth Pratt de Gasquet James; Dean Stanley, Attorney for Defendants, Thomas W. Miller, Alien Property Custodian, and Frank White, Treasurer of the United States.

GENTLEMEN:

Attached hereto please find copy of designation of record in the above-entitled appeal.

J. NOBLE HAYES,
Per G. H. J.,
Attorney for Plaintiffs.

Service of copy of above designation of record acknowledged this sixth day of February, 1924.

WM. J. NEALE,
Of Attorneys for Defendant Elizabeth Pratt de Gasquet James.
DEAN HILL STANLEY,
Attorney for Defendants Thomas W. Miller, Alien Property Custodian, and Frank White, Treasurer of the United States.

36 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 35, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 39090 in Equity, wherein Pauline Andre de la Mettrie et al. are Plaintiffs and Elizabeth Pratt de Gasquet James et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 20h day of March, 1924.

[Seal of Supreme Court of the District of Columbia.]

MORGAN H. BEACH.
Clerk.

EW.

36½ Court of Appeals of the District of Columbia, April Term, 1924.

No. 4138.

DAVID KEANE, Receiver, Appellant,

vs.

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, as Alien Property Custodian, and Frank White, as Treasurer of the United States, Appellees.

Appeal from the Supreme Court of the District of Columbia.

37 Supreme Court of the District of Columbia.

In Equity.

No. 39090.

PAULINE ANDRE DE LA METTRIE and GEORGE PRATT DE GASQUET JAMES, Plaintiffs,

against

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, as Alien Property Custodian, and Frank White, as Treasurer of the United States, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned the following papers were filed and proceedings had, in the above-entitled cause, to-wit:

38 *Amended Bill.*

Filed July 20, 1921.

Supreme Court of the District of Columbia.

In Equity.

No. 39090.

PAULINE ANDRE DE LA METTRIE and GEORGE PRATT DE GASQUET JAMES, Plaintiffs,

against

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, as Alien Property Custodian, and Frank White, as Treasurer of the United States, Defendants.

To the Honorable Judges of the Supreme Court of the District of Columbia:

The above named plaintiffs complaining of the above named defendants, for an Amended Complaint, aver and state:

I. That the plaintiffs were both born of American parents in the United States of America, but at present reside in Dinard, France, and have become citizens of the French Republic, the former by marriage to Vic Count de la Mettrie, a French citizen, and the latter by transfer of his allegiance to the French Republic during the late

World War for military purposes but having been an American citizen at the time the judgment hereinafter mentioned was rendered in his favor, and that both of the plaintiffs and the husband of the first named, to wit, Henri de la Mettrie,, served on the side of the Allies throughout the said War.

II. That upon information and belief, the defendant, Thomas W. Miller, is the Alien Property Custodian of the United States,
39 duly appointed by the President of the United States under and by virtue of the statute of the United States known as "Trading with the Enemy Act" approved October 6th, 1917, (C. 106, Sec. 17, 40 Stat. 411, 425) and that he was qualified for such office on March 16th, 1921.

III. Upon information and belief that the defendant, Frank White, is the Treasurer of the United States, duly appointed by the President of the United States by and with the consent of the Senate, being successor in such office of Guy F. Allen, who was the successor of John Burke as such Treasurer.

IV. That at the times hereinafter mentioned, the defendant, Elizabeth Pratt de Gasquet James, was and now is a resident of the city of Trieste in Austria, and is, and was, adjudged by judgment of the United States District Court for the Eastern District of New York, dated February 14th, 1921, and entered in the Clerk's office of said Court on the 16th day of February, 1921, in the case of Charles S. Aronstam against Elizabeth Pratt de Gasquet James, Francis P. Garvan, as Alien Property Custodian and another, to be an alien enemy as defined by the said Trading with the Enemy Act.

V. That a final decree and judgment of the Surrogate's Court of Ulster County in the State of New York, a Court having jurisdiction of the said proceeding, and upon service of Citation and due appearance of all the parties thereto, In the Matter of the Judicial Settlement of the Accounts and Proceedings of Elizabeth Pratt de Gasquet James as Ancillary Executrix under the will of
40 Amadee de Gasquet James, deceased, and entered in the Surrogate's office of said Court in said County aforesaid on March 21st, 1915, which, among other things, Ordered, Adjudged and Decreed the said Elizabeth Pratt de Gasquet James, after being charged with deficiency of $253,756.98 upon her Account as Executrix as settled therein, and after turning over certain securities and property of the said estate, to pay to Pauline Andre de La Mettrie the sum of $69,754.85, and to George Watson Pratt de Gasquet James the sum of $69,754.85, and the sum of $44,492.43 to Victoire Louise de Libran, and to Hereward Von der Decken, and Elizabeth Bleeker Von der Decken, or their Guardian, the sum of $34,877.43 each. Which said judgment, after appeals to the Appellate Division and the Court of Appeals of the State of New York was affirmed as modified and resettled in accordance with the judgment of the Court of Appeals of the State of New York by the said Surrogate's Court on November 3rd, 1917, and by decree entered in the office of said Surrogate on the said day and as so modified affirmed and resettled on the date aforesaid fixed and adjudged the amounts payable by the said Elizabeth Pratt de Gasquet James to

the respective parties to the said proceedings, as their respective shares of the said deficiency, as follows:—Pauline Andre de la Mettrie, $35,133.25; George W. Pratt de Gasquet James, $65,133.25; Victoire Louise de Libran, $45,542.22; Hereward Von der Decken, $32,566.68; Elizabeth Bleeker Von der Decken, $32,566.68, with legal interest upon the said amounts from March 21st, 1915, and awarding judgment to each of them respectively against the
41 said Elizabeth Pratt de Gasquet James accordingly. That the said judgment was duly docketed in the office of the Clerk of the City and County of New York on the 20th day of December, 1919, which was the County in which certain property hereinafter mentioned belonging to the said judgment-debtor Elizabeth Pratt de Gasquet James was situated and in the hands or under the control of the Farmers Loan & Trust Company of the City of New York at the time the said final judgment and decree was made and entered.

VI. That on or about November 5th, 1918, while the plaintiffs herein were engaged in the military service in France, and while the Surrogate's Court of Ulster County aforesaid retained jurisdiction of the said proceeding under its decision and decree, as modified and affirmed by the Court of Appeals, to enforce the said deficiency judgment under the provision of the New York Code of Civil Procedure (Old Section 2555) and of its said Decree and while the Plaintiffs were proceeding against the property of the Judgment Debtor in the State of New York, hereinafter referred to and within the jurisdiction of the Courts, the Alien Property Custodian, presuming to act in pursuance of the said Trading with the Enemy Act, seized and took into his possession certain property of the defendant Elizabeth Pratt de Gasquet James in the City of New York, then in the hands or under the control of the Farmers Loan & Trust Company of the City of New York, said seizure being announced in the public press on or about November 18th, 1919, together with the seizure of the properties of other alien enemies, as follows:

"Countess Elizabeth Pratt de Gasquet James Schloss
41½ Ponovic bei Littni, Kram, Austria, formerly Elizabeth Pratt de Gasquet James of Esopus, Ulster County, New York, life estate in $135,000 under a voluntary trust made before marriage; bonds $590,000; bank balance $2,248.28."

And that since the seizure of the said property the said Farmers Loan and Trust Company has acted as the agent of the Alien Property Custodian in holding the principal of the said sequestered trust property to the credit of the Custodian, and also for the purpose of collecting the income upon the said trust fund, and transmitting it quarterly to the said Custodian, the last quarterly payment having been forwarded to him on March 4th, 1921, as plaintiffs are informed and believe, at which time the amount in the hands of the Alien Property Custodian was about the sum of $21,000.

VII. That executions upon the said judgment in favor of each of the plaintiffs herein were issued out of the Surrogate's Court of Ulster County, New York, under its seal to the Sheriff of the City and

County of New York, directing him to satisfy the judgment hereinabove described in favor of the plaintiffs herein out of the property of the said Elizabeth Pratt de Gasquet James within the County of New York, and made returnable into the said Surrogate's Court, the first of said executions being dated October 18th, 1920, lodged with the Sheriff on October 22nd, 1920, and continuing with the reissuance of like executions down to the last execution dated February 26th, 1921, and lodged with the Sheriff March 4th, 1921, all of which executions were served upon the Farmers Loan & Trust Company and the Alien Property Custodian by the Sheriff, as plaintiffs are informed and believe have been returned by the
42 Sheriff unsatisfied.

VIII. That although plaintiffs are informed and believe that a large part of the property of the said judgment-debtor was actually in the City and County of New York at the time the said executions were outstanding in the hands of the Sheriff, the said Sheriff was prevented from levying upon any of the property of the judgment-debtor subject to levy, and the plaintiffs were prevented from instituting or taking any proceeding upon the return of the executions unsatisfied to reach the said property and subject it to the said executions or to the further orders of the Court, as in such cases made and provided under the statutory and common law of the State of New York, or otherwise proceed in the enforcement of their said judgment by reason of the restraining provisions of the Trading with the Enemy Act, Section 9, subdivision (*f*) as amended June 5th, 1921.

IX. That the sequestration of the property of the defendant Elizabeth Pratt de Gasquet James, aforesaid, under the said Trading with the Enemy Act, and the restraining provision of Section 9, subdivision (*f*) have prevented the plaintiffs from obtaining satisfaction of their judgment out of the property of the said Elizabeth Pratt de Gasquet James, in said State by the legal methods provided by the laws of the State of New York, and that she has employed the said Trading with the Enemy Act to give a preference to an unliquidated claim in favor of her former attorney by confession of judgment to him for $5,000, and its attempted satisfaction over the heads of the plaintiffs as prior judgment creditors, and to enable her,
43 among other things, to secure the payment of the balance of the said fund, under the control of the said Treasurer and Custodian, to her in such manner as to avoid the proceedings of the plaintiffs to satisfy their said judgment in the City and County of New York where the property was located at the time the same was sequestered by the Alien Property Custodian, as aforesaid.

X. That this is a suit in equity to establish the claim arising out of the said judgment due to the plaintiffs from the said Elizabeth Pratt de Gasquet James, and for the satisfaction of the same out of the property sequestered by the Alien Property Custodian and in his hands and in the hands of the Treasurer of the United States pursuant to the provisions of Section 9 of the Trading with the Enemy Act, and for all or any of the relief prayed for herein which the Court may deem just to grant.

XI. Upon information and belief that the said moneys were deposited in pursuance of Trading with the Enemy Act in the Treasury of the United States or under the control of the said Treasurer in whole or in part, and that the securities or other property seized by the Custodian are also in the possession of the Treasurer or the Alien Property Custodian.

XII. Upon information and belief that money and property of the said judgment-debtor Elizabeth Pratt de Gasquet James, seized and sequestered by the Alien Property Custodian as aforesaid, is still in the possession or under the control of either the Treasury Department of the United States or the Alien Property Custodian.

XIII. That on or about April 22nd, 1920, the plaintiffs
44 filed their respective verified claims under the said judgment with the Alien Property Custodian and on or about May 29th, 1920, duly filed their applications with the Custodian for allowance of the same under Section 9 of the "Trading with the Enemy Act" and that the same were disallowed on or about July 29th, 1920, upon the ground that the Republic of France had not accorded reciprocal rights to American citizens as to alien enemy property sequestered by that Government. That upon subsequent advices from the French Government conveyed to the American Department of State that such reciprocal privileges had been granted by it, such being the fact, the claims were again resubmitted and applications renewed to the President for the allowance of the same and were on May 1921, disallowed. And that the plaintiffs' claims have both been passed upon and disallowed by the Alien Property Custodian and the President and this suit is accordingly brought upon the same under the provision to the Trading with the Enemy Act, Section 9, for the relief prayed for herein. That the plaintiffs are jointly interested in the allowance of the said claims and the distribution of the said fund and property in the hands of the Custodan and Treasurer between them equally to the extent of their said judgments and interest.

Wherefore, Plaintiffs pray that it be decreed that the sum of $65,133.25 with interest from March 21st, 1915, is now due to each of the plaintiffs herein from the defendant, Elizabeth Pratt de Gasquet James upon the decree and judgment secured against her in
45 the Surrogate's Court of Ulster County in the State of New York, on March 21st, 1915, and recorded in the office of the said Surrogate in said Ulster County on said date, a transcript of which was duly docketed in the office of the Clerk of the Supreme Court and of the County of New York on the 20th day of December, 1919: and that they have judgment of this Court therefor. And that the Alien Property Custodian and the Treasurer of the United States, or the successors in office be directed to pay out of any money in their possession, which was or is the property of the defendant, Elizabeth Pratt de Gasquet James, to each of the Plaintiffs a sum sufficient to satisfy the said judgments as to each of them, or in so far as the money or property which was or is the money or property of the said defendant James in the possession or under the control of the said Custodian or Treasurer is sufficient to satisfy the same, share and share alike. And until there shall be a determination of

Plaintiffs' claims or cause of action in the premises, that the said Alien Property Custodian and the Treasurer of the United States retain in their possession all of the money or property which was or is the money or property of the said Elizabeth Pratt de Gasquet James up to the amount of the said judgment for the payment to the Plaintiffs of their said claim or claims, together with interest and costs; or in the alternative that the Alien Property Custodian of the United States and the Treasurer of the United States, defendants herein, be Ordered and Decreed to return the property and funds sequestered or held by them as the property of Elizabeth Pratt de Gasquet James to the Farmers Loan & Trust Company, Trustee, or otherwise of the City of New York and such other person or persons by
46 whom said property was conveyed, transferred, assigned, delivered or paid over to the Alien Property Custodian; and that the plaintiffs have such other and further relief in the premises as may be just and equitable.

Wherefore, Plaintiffs now pray that a writ of subpœna issue herein, directed to the above named defendants, and each of them, commanding them on a certain day to appear and answer the bill of complaint.

CHARLES HENRY BUTLER,
JOHN A. KRATZ,
Plaintiffs' Solicitors.

UNITED STATES OF AMERICA,
State & County of New York, ss:

J. Noble Hayes, being duly sworn, deposes and says that he is an attorney and counselor at law, residing and having an office in the City, County and State of New York, and that he is also the attorney in fact, by duly executed power of attorney of Pauline Andre de le Mettrie and George Pratt de Gasquet James, the plaintiffs in the above entitled action; that he has read the foregoing declaration and knows the contents thereof and that the same are true of his own knowledge except as to those matters therein alleged on information and belief and as to those matters, he believes them to be true; that the sources of his information and the grounds of his belief are his complete familiarity with the transactions referred to, in which he has personally participated, and communications received
47 by him orally and in writing from the plaintiffs; that the reason why this verification is made by deponent and not by the plaintiffs is that neither of the said plaintiffs are now within the United States.

J. NOBLE HAYES.

Subscribed and sworn to before me this 18" day of July, 1921.
D. H. PULVERMACHER,
Notary Public, Kings County, No. 162.

Certificate filed in New York County No. 47.
Kings County Register's No. 3341.
New York County Register's No. 3046.
Commission Expires March —, ——.

Form 2. No. 66356. Series B.

STATE OF NEW YORK,
County of New York, ss:

I, William F. Schneider, Clerk of the County of New York, and also Clerk of the Supreme Court in and for said county.

Do hereby certify, That said Court is a Court of Record, having by law a seal; that D. H. Pulvermacher whose name is subscribed to the annexed certificate or proof of acknowledgment of the annexed instrument was at the time of taking the same a Notary Public acting in and for said county, duly commissioned and sworn, and qualified to act as such; that he has filed in the Clerk's Office of the County of New York a certified copy of his appointment and qualification as Notary Public for the County of Kings with his autograph signature; that as such Notary Public, he was duly authorized by the laws of the State of New York to protest notes; to take and certify depositions; to administer oaths and affirmations; to take affidavits and certify the acknowledgment and proof of deeds and other written instruments for lands, tenements and hereditaments, to be read in evidence or recorded in this state; and further, that I am well acquainted with the handwriting of such Notary Public and verily believe that his signature to such proof or acknowledgment is genuine.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at the City of New York, in the County of New York, this 19 day of July 1921.

[SEAL.] WM. F. SCHNEIDER,
Clerk.

Fiat.

Leave to file amended petition granted.

A. A. HOEHLING,
Justice.

7/20/21.

48 *Answer of Thomas W. Miller and Frank White.*

Filed October 18, 1921.

* * * * * * *

Now come the defendants, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, separately and severally answering the bill of complaint, and as their separate and several answers say:

(1) That they have no knowledge or information sufficient to form a belief with respect to the averments of paragraph numbered I of the bill of complaint, and therefore demand strict proof thereof;

(2) They admit the averments of paragraph numbered II of the bill of complaint;

(3) They admit the averments of paragraph numbered III of the bill of complaint;

(4) Answering the averments of paragraph numbered IV of the bill of complaint these defendants say that they have no knowledge or information sufficient to form a belief with respect to the residence of the defendant Elizabeth Pratt de Gasquet James, and therefore demand strict proof thereof.

Further answering said paragraph these defendants say that the allegation that the said Elizabeth Pratt de Gasquet James was adjudged by judgment of the United States District Court for the Eastern District of New York, dated February 14, 1921, and entered in the Clerk's office of said Court on the 16th day of February, 1921, in the case of Charles S. Aronstam v. Elizabeth Pratt de Gasquet James, Francis P. Garvan, as Alien Property Custodian, and another
49 to be an enemy as defined by the said Trading with the Enemy Act, is immaterial, irrelevant, inconsequential, and impertinent, in so far as this proceeding is concerned, and these defendants pray that the same may be stricken from the bill of complaint. In so far as this court may find that said allegations are material, these defendants deny that such an adjudication was made by the said court and say that any expressions by the court as to the enemy character of the said defendant were obiter dicta and did not constitute an adjudication or determination.

(5) They have no knowledge or information sufficient to form a belief with respect to paragraph numbered V of the bill of complaint, and therefore demand strict proof thereof;

(6) Answering the averments of paragraph numbered VI of the bill of complaint, these defendants say that the Alien Property Custodian, acting under and pursuant to the terms and provisions of the Trading with the Enemy Act, the amendments thereto, and the proclamations and executive orders issued thereunder, after investigation determined that Elizabeth Pratt de Gasquet James was an enemy within the purview and meaning of the said Act, the amendments thereto, and the proclamations and executive orders issued thereunder, and that certain money and other property were owing or belonged to, held for, by, on account of, or for the benefit of the said enemy. Thereupon the Alien Property Custodian required that the said money and other property be conveyed, transferred, assigned, delivered, and/or paid to him, to be held, administered and accounted for as provided by law, and the said requirement of the Alien Property Custodian was duly and fully
50 complied with. Subsequent to the said receipt the Alien Property Custodian, acting pursuant to law, paid over to the Treasurer of the United States the money received by him, and there is now in the hands of the Alien Property Custodian and the Treasurer of the United States a large amount of money and other property required to be transferred to the Alien Property Custodian as aforesaid.

Further answering said paragraph, these defendants say that the

determination of enemy character and of the ownership of the said property by the said Elizabeth Pratt de Gasquet James is not final for the purposes of this suit and the plaintiffs herein must offer proof and this court must determine out of what, if any, of the said money and other property any claims which these plaintiffs may establish may be paid.

Further answering the said paragraph, these defendants say that at the proper time in this proceeding they will file in this court a complete and accurate accounting of all the money and other property required to be conveyed, transferred, assigned, delivered, and/or paid to the Alien Property Custodian as the property of Elizabeth Pratt de Gasquet James to the end that a just and equitable decree may be rendered herein.

Except as specifically answered heretofore these defendants say that each and every other allegation in paragraph numbered VI of the bill of complaint is immaterial and impertinent to this cause of action, and these defendants are not required to answer the same.

In so far as this court may find the said allegations relevant
51 or pertinent, these defendants say that they have no knowledge or information sufficient to form a belief with respect thereto, and therefore demand strict proof thereof;

(7) They have no knowledge or information sufficient to form a belief with respect to paragraph numbered VII of the bill of complaint, and therefore demand strict proof thereof;

(8) Answering the averments of paragraph numbered VIII of the bill of complaint, these defendants say that the averments of fact contained therein are immaterial, irrelevant and impertinent, and these defendants are not required to answer the same. In so far as this court may find that any or all of the said averments are material, these defendants say that they have no knowledge or information sufficient to form a belief with respect thereto, and therefore demand strict proof thereof;

(9) Answering the averments of paragraph numbered IX of the bill of complaint, these defendants say that the same are immaterial, irrelevant, impertinent and inconsequential and these defendants are not required to answer the same. In so far as this court may find that the said averments are material, these defendants say that they have no knowledge or information sufficient to form a belief with respect to the averments of fact alleged therein, and therefore demand strict proof thereof;

(10) The averments of paragraph numbered X of the bill of complaint are statements of law which these defendants are not required to answer;

(11) Answering the averments of paragraph numbered XI of the bill of complaint, these defendants refer to their answer to
52 paragraph numbered VI of the bill of complaint and pray that the same may be incorporated herein as if set forth in full as their answer to paragraph numbered XI of the bill of complaint;

(12) Answering the averments of paragraph numbered XII of the bill of complaint, these defendants refer to their answer to para-

graph numbered VI of the bill of complaint, and pray that the same may be incorporated herein as if set forth in full as their answer to paragraph numbered XII of the bill of complaint;

(13) Answering the averments of paragraph numbered XIII of the bill of complaint, these defendants admit that the plaintiff herein filed a notice of his claim with the Alien Property Custodian pursuant to Section 9 of the Trading with the Enemy Act. They admit that the plaintiffs herein filed an application for the executive allowance of their claims, and that the application for executive allowance was acted on unfavorably to the plaintiffs herein and their claims were disallowed.

Answering the averments of said paragraph with respect to the reasons as to why the application of the plaintiffs herein for executive allowance of their claims was unfavorably acted upon to the plaintiffs, these defendants say that such allegations are immaterial, irrelevant and impertinent, and these defendants are not required to answer the same.

Further answering the said paragraph, these defendants deny that the Republic of France extends to a citizen of the United States such reciprocal rights as are required by Section 9 (*e*) of the
53 Trading with the Enemy Act.

Further separately and severally answering each and every allegation of the bill of complaint, these defendants separately and severally say:

That this court is without jurisdiction of the subject matter of this suit because:

(1) The debt sought to be recovered by the plaintiffs herein was neither owing to nor owned by the plaintiffs prior to October 6, 1917; and

(2) The plaintiffs are not citizens of the United States and the debt which they are seeking to recover did not arise with reference to the money or other property held by the Alien Property Custodian or the Treasurer of the United States as required by Section 9 (*e*) of the Trading with the Enemy Act.

Wherefore these defendants having fully answered the bill of complaint, pray that they be dismissed with their costs in this behalf expended.

THOS. W. MILLER,
Alien Property Custodian.
FRANK WHITE,
Treasurer of the United States.

PEYTON GORDON,
Attorney of the United States in and for the District of Columbia.

54 DISTRICT OF COLUMBIA, *ss:*

Thomas W. Miller, being first duly sworn, upon oath deposes and says that he is Alien Property Custodian of the United States of America; that he has read the foregoing answer by him subscribed

and knows the contents thereof; that the matters and things therein stated as of his personal knowledge are true, and those stated as upon information and belief he believes to be true.

THOS. W. MILLER.

Subscribed and sworn to before me this 18 day of October, A. D. 1921.

[SEAL.] ODEN B. GRAY,
Notary Public.

DISTRICT OF COLUMBIA, *ss:*

Frank White, being first duly sworn, upon oath deposes and says that he is Treasurer of the United States of America; that he has read the foregoing answer by him subscribed and knows the contents thereof; that the matters and things herein stated as of his personal knowledge are true, and those stated as upon information and belief he believes to be true.

FRANK WHITE.

Subscribed and sworn to before me this 18th day of October, A. D. 1921.

[SEAL.] ELLA F. VAN ZANDT.

55 *Answer of Elizabeth Pratt de Gasquet James.*

Filed November 22, 1921.

* * * * * * *

The defendant, Elizabeth Pratt de Gasquet James, for her answer to the amended bill of complaint of the plaintiffs states:

I. She admits that both the plaintiffs reside in and are citizens of the Republic of France, as alleged in paragraph one of said amended complaint. This defendant has no knowledge as to the allegation of said paragraph that the plaintiff, George Pratt de Gasquet James, was an American citizen at the time the judgment in said bill of complaint mentioned was rendered in his favor.

II. She admits the allegations of paragraph two of said complaint.

III. She admits the allegations of paragraph three of said complaint.

IV. She denies that she was or is a resident of the City of Trieste in Austria, as alleged in paragraph four of said amended complaint. She denies that she was adjudged to be an alien enemy as defined by the Trading with the Enemy Act, as alleged in paragraph four of said amended complaint, but, on the contrary, alleges that the only effect of said judgment in that respect was to establish her status as a technical enemy on account of being in territory of an enemy or of an ally of an enemy so that the seizure of her property by the Alien Property Custodian was justified, but she alleges that at

56 the time her property was seized by the Alien Property Custodian, — and that she is now, a citizen of the United States of America. She is now residing in Dinard, France.

V. She admits, except as otherwise set forth in this paragraph of her answer, the material allegations of paragraph five of the said amended bill of complaint, but states that the subject of the proceeding in which said judgments were rendered was the estate of her former husband, Amadee de Gasquet James, of whose estate she was executrix; that it was not the property of this defendant, nor was it in any way connected with the property of this defendant which was seized by the Alien Property Custodian, as set out in said amended complaint. This defendant denies that the capital of the trust fund mentioned in said bill of complaint was, on the 3rd day of November, 1917, or at any time subsequently to the 14th day of October, 1887, the property of this defendant.

VI. Defendant admits that on or about May 29th, 1918, the Alien Property Custodian of the United States, acting under authority of law, seized and took into his possession certain property of this defendant which was then in the hands or under the control of The Farmers' Loan and Trust Company, of the City of New York, and that since the seizure of said property said The Farmers' Loan and Trust Company has acted as agent of the Alien Property Custodian in holding the principal of said sequestered property (but not including the principal of said trust fund which was not sequestered) to the credit of the Custodian and has collected the income accruing on said trust fund and has transmitted it to the said Alien Property Custodian, and that she believes the amount of her said
57 property now in the hands of the Alien Property Custodian is about or in excess of $21,000., and she denies all the other allegations contained in said paragraph. She further states that her property which was seized by the Alien Property Custodian, as aforesaid, and which is now held by the Alien Property Custodian, with the exception of certain bonds appraised at $590., consists entirely of money derived as income from her life interest in and to a certain trust fund created from property belonging to herself, and which never belonged to her deceased husband Amadee de Gasquet James, by a certain trust deed executed by her on October 14, 1887, to the said The Farmers' Loan and Trust Company; that the claim which the plaintiffs are now asserting did not arise with reference to said voluntary trust fund or to the income of the same, which is the property of this defendant and is now held by the Alien Property Custodian, nor with reference to said bonds. On the contrary, that the claim which is now asserted arose with reference to the property of the former husband of this defendant, namely, the estate of Amadee de Gasquet James.

VII. This defendant has no knowledge as to the truth of the allegations contained in paragraph seven of the amended complaint, and therefore denies the same in so far as they may be material.

VIII. Defendant for want of knowledge denies the allegations of paragraph eight of the amended complaint, except in so far as said paragraph alleges that the property of this defendant in the hands of the Alien Property Custodian was not subject to
58 execution or seizure on the said judgment of the Surrogate's Court, by reason of the express provisions of the Trading

with the Enemy Act; this is admitted. But she denies that any property at any time held by the said The Farmers' Loan and Trust Company for, or for the benefit of, this defendant, could under the laws of the State of New York, have been levied upon under any execution issued out of any court or by any official, except the said bonds aforesaid which were appraised at $590.

IX. She denies each and every allegation contained in paragraph nine of the amended bill of complaint, as therein alleged, except as admitted by the preceding paragraph VIII of this answer.

X. She admits the allegations of paragraph twelve of said amended complaint, except so far as payments have been made out of the money by virtue of a judgment entered in the United States District Court for the Eastern District of New York on or about the 14th day of February, 1921, in favor of Charles S. Aronstam against Elizabeth Pratt de Gasquet James, Francis P. Garvan, as Alien Property Custodian, and John Burke, as Treasurer of the United States.

XI. She denies that the claims filed by plaintiffs with the Alien Property Custodian, as alleged in paragraph thirteen of the amended complaint, were disallowed upon the ground that the Republic of France had not accorded reciprocal rights to American citizens as to alien enemy property sequestered by that Government, but on the contrary states that said claims were rejected for the sole reason that they did not arise with reference to the money or other
59 property held by the Alien Property Custodian or the Treasurer of the United States as the property of this defendant. She is not advised whether or not the French Government has accorded such reciprocal rights to American citizens and therefore denies this allegation of paragraph thirteen of said amended complaint. She admits that the plaintiffs did file their respective claims with the Alien Property Custodian and the same were disallowed on July 29, 1920, and again on May —, 1921.

Defendant therefore prays that the amended bill of complaint as against her may be dismissed, and for such other relief as she may be entitled.

FRANK DAVIS, JR.,
S. M. STELLWAGEN,
Munsey Bldg., Washington, D. C.;
FREDERICK GELLER,
22 Exchange Place, New York City,
Attorneys for Elizabeth Pratt de Gasquet James.

UNITED STATES OF AMERICA,
State and County of New York, ss:

Frederick Geller, being first duly sworn, says that he is an attorney and counsellor at law residing in Bronxville, New York, and having an office in the City and County and State of New York; that he is one of the attorneys of Elizabeth Pratt de Gasquet James, one of the defendants in the above entitled action; that the said Elizabeth

Pratt de Gasquet James is absent from the District of Co-
60 lumbia and from the United States of America, being at present in Dinard, France, and that the facts stated and allegations contained in the foregoing answer of said Elizabeth Pratt de Gasquet James are true as affiant verily believes.

FREDERICK GELLER.

I hereby certify that the above affidavit was sworn to before me by said Frederick Geller, and by him signed in my presence this 18th day of November, 1921.

[SEAL.]

B. H. BECKER,
Notary Public, Bronx County, No. 74.

Bronx County Register's No. —.
New York County Clerk's No. 263.
New York County Register's No. 3299.
Commission expires March 30, 1923.

Motion for Leave to Intervene.

Filed September 21, 1923.

* * * * * * *

Now comes David Keane, Receiver, by his attorneys Barnard & Johnson, and moves the Court as follows:—

1. That leave be granted said Receiver to intervene in the above entitled cause, and file attached petition.
2. That the said Receiver be made a party plaintiff or defendant to the above entitled cause for the purpose of asserting his right as Receiver to the sequestered property of the defendant Elizabeth Pratt de Gasquet James.
3. That the further trial of the above entitled cause now set for October 2nd, 1923, be stayed until issue is joined on the pleadings of said Receiver.

BARNARD & JOHNSON,
Attorneys for Petitioner.

61 To Messrs. Frank Davis, Jr., S. M. Stellwagen, and William J. Neale, Attorneys for Defendant Elizabeth Pratt De Gasquet James; Messrs. Charles Henry Butler, John A. Kratz, Attorneys for Plaintiffs; Messrs. Peyton Gordon and D. H. Stanley, Attorneys for Thomas W. Miller, Alien Property Custodian, and for Frank White, Treasurer of the United States:

Please take notice that the foregoing motion will be called to the attention of one of the Justices sitting in Equity Court on Friday, September 28, 1923 at 10:00 o'clock A. M., or so soon thereafter as counsel may be heard.

BARNARD & JOHNSON,
Attorneys for Petitioner.

Service of above motion accepted this 21st day of September A. D. 1923.

CHAS. HENRY BUTLER,
JOHN A. KRATZ,
Attorneys for Plaintiff.
FRANK DAVIS, JR.,
S. M. STELLWAGEN,
WILLIAM J. NEALE,
Attorneys for Defendant Elizabeth Pratt de Gasquet James.

Copy of the above motion received this 21 day of Sept. 1923.

DEAN HILL STANLEY,
Attorney for Thomas W. Miller, Alien Property Custodian, and for Frank White, Treasurer of the United States.

62 *Petition of David Keane, Receiver.*

* * * * * * *

The Petition of David Keane, Receiver, etc., respectfully shows to Judges of this Honorable Court, and prays as follows:

I. That the above named defendant, Elizabeth Pratt de Gasquet James, was duly appointed sole ancillary executrix under the Will of her husband, Amandee de Gasquet James, of Esopus, Ulster County, New York, of his estate, and duly qualified on March 22nd, 1904.

That said Amandee de Gasquet James died in France on July 28th, 1903, leaving a last Will by which he bequeathed all, or practically all, of his large European Estate, situated in France, England, Austria and Germany, to his wife, Elizabeth Pratt de Gasquet James, and all his American Estate to be divided equally between his four children, all of whom were living at the time of his death, two of whom being the plaintiffs in the above entitled action.

That the said Elizabeth Pratt de Gasquet James having failed to account as said Executrix for upwards of eight years, and having, in 1912, married Duc Henry Borwin de Meckkenburg, aged twenty-five (25), a cousin of the then German Emperor, and who was an improvident young man, and an adjudged spendthrift, as Petitioner is informed and believes, and fearing the American Estate upon which the Executrix was making large drafts was in danger, a proceeding was begun by the above named plaintiffs in or about August,
63 1912, against the said Elizabeth Pratt de Gasquet James, as Executrix, aforesaid, to revoke her letters testamentary and compel her to account to the beneficiaries of the said Will, in the Surrogates Court of Ulster County, New York, the Court having jurisdiction of the said proceeding, and upon service of citation and due appearance of all the parties thereto, and that such proceedings were had therein. That a decree and judgment of the said Court was duly rendered and filed in the said County of Ulster, New York, on the 21st day of March, 1915, which, among other things, Ordered, Adjudged and Decreed that the said Elizabeth Pratt de Gasquet James,

after being charged with a deficiency of $253,756.98 upon her Account as Executrix filed therein, and after turning over certain securities and property of the said estate, pay the same as follows: to Pauline Andre de la Mettrie the sum of $69,754.85, and to George Watson Pratt de Gasquet James the sum of $69,754.85, and the sum of $44,492.43 to Victoire Louise de Libran, and to Hereward Von der Decken and Elizabeth Bleeker Von der Decken, or their Guardian, the sum of $34,877.43 each. Which said judgment, after appeals to the Appellate Division and the Court of Appeals of the State of New York was affirmed as modified and resettled in accordance with the judgment of the Court of Appeals of the State of New York by the said Surrogate's Court on November 3rd, 1917, and by decree entered in the office of said Surrogate on the said day and as so modified affirmed and resettled on the date aforesaid fixed and adjudged the amounts payable by the said Elizabeth Pratt de Gasquet James to the respective parties to the said proceedings, as their respective
64 shares of the said deficiency, as follows: Pauline Andre de la Mettrie, $65,133.25; George W. Pratt de Gasquet James, $65,133.25; Victoire Louise de Libran, $45,542.22; Hereward Von der Decken, $32,566.68; Elizabeth Bleeker Von der Decken, $32,566.68, with legal interest upon the said amounts from March 21st, 1915, and awarding judgment to each of them respectively against the said Elizabeth Pratt de Gasquet James accordingly. That the said judgment was duly docketed in the office of the Clerk of the City and County of New York on the 20th day of December, 1919, which was the County in which certain property hereinafter mentioned belonging to the said judgment-debtor Elizabeth Pratt de Gasquet James was situated and in the hands or under the control of the Farmers Loan & Trust Company of the City of New York at the time the said final judgment and decree was made and entered, and also docketed in the office of the Clerk of Oneida County, New York, on the 5th day of November, 1921.

II. That, as your Petitioner is informed and believes, the said judgment-debtor, Elizabeth Pratt de Gasquet James, was out of the United States at the time the said decree was rendered and has not been here since, nor for many years prior thereto, except to attend the trial in the Surrogate's Court in December, 1913, she having for many years lived in Europe. That while the Plaintiffs and their sister, Countess de Libran, were endeavoring to collect their judgments and in the early part of 1918, the Plaintiffs both being in the Military service of France at the front at the time, and while the Surrogate's Court of Ulster County, aforesaid, retained jurisdiction of the said proceeding under its decree and judgment, as modi-
65 fied and affirmed by the Court of Appeals, to enforce the said deficiency judgment by execution against the property of the judgment-debtor in the State of New York, and by Order upon the judgment-debtor personally if found within the State, and were proceeding so to do, the Alien Property Custodian of the United States, presuming to act under and in pursuance of the Trading with the Enemy Act, seized and took into his possession certain property of the said judgment-debtor, Elizabeth Pratt de Gasquet James in the

City of New York, which was available to the judgment-creditors for the satisfaction of their judgments, under the laws of the State of New York, in a suit in equity and under the statutory action provided by Section 1871-1879 of the New York Code of Civil Procedure, now Section- 1189-1196 of the Civil Practice Act of New York, said property consisting of the life estate of the judgment-debtor in a voluntary trust created by her in the year 1887, in the Farmers Loan & Trust Company of New York, as Trustee, of certain securities of about $135,000 in value; and also of a bank balance of $2,248.28; and securities not in the said Trust, but in the custody of the said Farmers Loan & Trust Company, the value of which is not known to petitioner definitely. And that the said Farmers Loan & Trust Company was made the agent of the said Custodian and Treasurer of the United States for the collection of the income upon said sequestered property and that it has since collected the same and transmitted it in part to the said Custodian and Treasurer of the United States, and placed part of it to the credit of the Treasurer or Custodian, in it, the said Company, and that there is now in the hands of the
66 Alien Property Custodian or the Treasurer of the United States, income of the said sequestered fund amounting to about $23,000.00 and on deposit in the Farmers Loan & Trust Company of New York to the credit of the said Custodian or Treasurer of the United States, the sum of about $23,000.00 in addition to the securities sequestered, and the bank account above mentioned, as your Petitioner is informed and believes.

III. That by the sequestration of the said property under the Trading with the Enemy Act, as Amended June 5th, 1920, Section 9 (*f*) the plaintiffs were stayed from proceeding against the said sequestered property for the satisfaction of their judgments by any of the remedies afforded them by the laws of the State of New York; and that numerous executions issued out of and returnable to the Surrogate's Court of Ulster County, New York, upon the said judgments from time to time to the Sheriff of the County of New York, and such executions issued to the Sheriff of Oneida County, New York, were returned unsatisfied, but that the plaintiffs were precluded from proceeding upon such returns against the sequestered property of the judgment-debtor in accordance with the laws and practice of the State of New York, where the property was situated when sequestered, by virtue of the restraining provision of the Act as Amended June 5th, 1920, Section 9, which provides:

"(*f*) Except as herein provided, the money or other property conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian shall not be liable to lien, attachment, garnishment, trustee process or execution, or subject to any order or decree of any Court."

IV. That the claims of the said judgment-creditors, the
67 the plaintiffs herein, against the said sequestered property in the hands and under the control of the Alien Property Custodian, and applications for the allowance of the same were duly filed by them with him, the former on April 22nd, 1920, and the latter on

or about July 29th, 1920, and the same were in May, 1921, finally disallowed.

That a claim to the restoration of the sequestered property was, as petitioner is informed and believes, filed by the defendant Elizabeth Pratt de Gasquet James, with the Alien Property Custodian, and application for its allowance on or about December 24th, 1920, under the Amendment of the Trading with the Enemy Act as Amended June 5th, 1920, Section 9 (*b*), sub. (3), providing that the President may order payment, transfer or delivery of sequestered property held by the Alien Property Custodian or the Treasurer of the United States, which was at the time of its sequestration the property of "(3) "A woman who at the time of her marriage was a citizen of the "United States (said citizenship having been acquired by birth in the "United States) and who prior to April 6, 1917, intermarried with a "subject of Germany or Austria-Hungary, and the money or other "property concerned was not acquired by such woman either directly "or indirectly from any subject or citizen of Germany or Austria-"Hungary," and related provisions of the Amended Act.

And that the President, acting through the Attorney General of the United States, on or about May 26th, 1921, allowed the claim of the said defendant, Elizabeth Pratt de Gasquet James, to the said sequestered property in the hands and under the control of
68 the Alien Property Custodian and the Treasurer of the United States; and that as Petitioner is informed and believes, the said money and property was about to be turned over to the defendant James under the said award by the Government representatives when its payment and transfer were stayed by the commencement of the above entitled suit, and that said sequestered money and property are now held by the Alien Property Custodian and the Treasurer of the United States to the amount of $45,000 or thereabout, subject to the order and judgment of the Court in this suit.

That a proceeding was begun on the 1st day of December, 1922, in the Supreme Court of the State of New York, County of New York, under the provisions of Article 45 of the Civil Practice Act of the State of New York, under Section 785 of such Act, by plaintiff herein, George Pratt de Gasquet James, entitled as follows:

"Supreme Court, County of New York, State of New York. In the Matter of the Farmers Loan & Trust Company, 3rd Party, in proceedings supplementary to execution upon application of George Pratt de Gasquet James, Judgment-Creditor, under a decree and judgment rendered in the Surrogate's Court of Ulster County, New York, entitled In the matter of the judicial settlement of the account of proceedings of Elizabeth Pratt de Gasquet James, as ancillary executrix under the will of Amadee de Gasquet James, deceased."

69 and that such proceedings were had therein, and the said Supreme Court in and for the County of New York, State of New York, made an order on June 18th, 1923, in accordance with the provisions of Section 805 of the said Civil Practice Act. appointing your Petitioner, David Kane as receiver of all the property, debts, equi-

table interests, rights and things in action, effects and estate, real and personal, of the said defendant Judgment-debtor, Elizabeth Pratt de Gasquet James, and vesting him with all the powers and duties of a Receiver upon the filing of a bond by him in the penalty of $250, and requiring the deposit of all funds received by him in the American Exchange National Bank of the City of New York, subject to the order of the Court, and further staying the judgment-debtor, Elizabeth Pratt de Gasquet James and all others from anywise disposing of her property, except in obedience to and until further direction of the Court. That the said order was duly entered in the office of the Clerk of the County of New York on June 18th, 1923, and a bond of $250, approved by the Court, was duly filed in said Clerk's office on June 20th, 1923, and a certified copy of said Order and the bond filed in the office of the Clerk of Ulster County on June 21st, 1923.

That a certified copy of said Order is hereto attached and marked Exhibit "A."

That by the filing of the said Order and Bond your Petitioner became vested with all the property of the judgment debtor, Elizabeth Pratt de Gasquet James, in accordance with the provisions of Section 809 of the Civil Practice Act, State of New York, which is as follows:

70 "Sec. 809. *Vesting of Property in Receiver.*—The property of the judgment-debtor is vested in a receiver who has duly qualified, from the time of filing the order appointing him or extending his receivership, as the case may be; subject to the following exceptions:

1. Real property is vested in the receiver only from the time when the order or a certified copy thereof, as the case may be, is filed with the Clerk of the County where it is situated.

2. Where the judgment-debtor at the time when the order is filed resides in another County of the State, his personal property is vested in the receiver only from the time when a copy of the order, certified by the Clerk in whose office it is recorded, is filed with the Clerk of the County where he resides."

V. That a similar proceeding supplementary to execution was begun on November 8th, 1922, by the plaintiff herein, Pauline Andre de la Mettrie, entitled as follows:

"Before F. H. Hazard Oneida County Judge. In the matter of the examination of George M. Weaver, individually and as trustee under the will of Elizabeth Tibbits, 3rd Party, in proceedings supplementary to execution under application of Pauline Andre de la Mettrie, judgment-creditor under a decree and judgment rendered in a proceeding in the Surrogate's Court of Ulster County, New York, entitled In the matter of the judicial settlement of the account of proceedings of Elizabeth Pratt de Gasquet James as ancillary executrix under the will of Amadee de Gasquet James, Deceased,

and such proceedings were had therein, that on July 28th,
71 1923, an Order was made therein by the Hon. F. H. Hazard, Oneida County Judge, extending the receivership in said supplementary proceeding to your Petitioner upon the filing of a bond, or the deposit of $100. in Court, and that the same was duly filed on the said date and your Petitioner duly qualified by depositing $100. with the Clerk of the Court on August 18th, 1923, and that a certified copy of the said Order was likewise filed with the Clerk of the County of Ulster on or about August 18th, 1923.

That a copy of the said Order is hereto annexed and marked Exhibit "B."

That certified copies of the first above mentioned order of June 18th, 1923, were served upon the Alien Property Custodian and the Treasurer of the United States on June 21, 1923, and certified copy of the Order of July 28th on the Attorney General on August 17th, 1923.

VI. That an Order was duly made in the Supplementary Proceeding of George Pratt de Gasquet James, above entitled and described, by the Supreme Court of the County and State of New York, on July 13th, 1923, authorizing the Petitioner as Receiver aforesaid to bring suit in the District of Columbia to recover the property of the judgment-debtor James, and to stay the payment or transfer of the sequestered property of the said judgment-debtor, or to apply to intervene in the action, as he may be advised, and that a certified copy of said Order is hereto attached and marked Exhibit "C."

VII. That by virtue of the said Orders, Exhibits "A" and "B", your Petitioner has become vested with all the property and causes of
72 action, debts and interests, legal and equitable, of the said judgment-debtor, Elizabeth Pratt de Gasquet James, in the State of New York and elsewhere, so far as other jurisdictions may, upon the principles of interstate comity, or otherwise, recognize the Orders of the State of New York, and charged with the duty of applying the said property or so much of it as may be necessary to pay the judgments of the execution creditors (the plaintiffs herein) and to turn over any balance that may remain to the judgment-debtor under the direction of the Court. And that your Petitioner is entitled to receive the sequestered property which has been awarded to the judgment-debtor by the President, acting through the Attorney General, on or about May 26th, 1921; or to recover the same in this suit if the Final Order of the Supreme Court is recognized and gives effect by this Court as against all parties hereto, except the plaintiffs, and unless the said property shall be awarded directly to them in this suit. And that your Petitioner is advised and believes that the plaintiffs are not opposed to this application, and do not regard it as hostile to their interests, but while preferring to have the property awarded directly to them on their claims would not oppose the allowance of the same to your Petitioner as Receiver aforesaid.

That under the law of the State of New York, a Receiver in supplementary proceedings represents not only the judgment-debtor but also the judgment-creditor for the purpose of paying their judgments

out of the property of the judgment-debtor received by him and collected for that purpose, but also the judgment-debtor for conserving it and paying to the debtor the balance, if any, not
73 so expended, less expenses and allowances by the Court.

VIII. That, as Petitioner is informed and believes, there remains unpaid upon the judgments and executions of the plaintiffs at this time, upwards of $50,000. each, or much more than the entire amount of the sequestered property in the hands or under the control of the defendant Custodian and the Treasurer of the United States.

That the trial of the above entitled action was commenced on February 15th, 1923, and adjourned to a further day to be fixed by the Court, awaiting the return of letters rogatory sent out by the Attorney General to France, in which the plaintiffs joined, to take the testimony of two French lawyers upon the question as to whether France had accorded reciprocal rights to American citizens as accorded to French citizens by the Trading with the Enemy Act, as Amended June 5th, 1920. That the said letters rogatory sent out as aforesaid, were returned by the Minister of Justice of the French Republic to the American Ambassador in France on March 21st, 1923, unexecuted, with a memorandum saying:

"That the two judicial mandates in question have not appeared to the Keeper of the Seals as possible of execution. They aim, in fact, at obtaining from two above named persons information of a purely doctrinal character relative to hypotheses concerning established methods of procedure."

The above communication being returned with the unexecuted letters rogatory to the United States some weeks later. Whereupon the defendant James, on June 12th, moved the Court to proceed with the trial of the said case, and the Court set it down for trial peremptorily on October 2nd. That a commission was issued
74 and sent to France in the latter part of August, and may not be returned by October 2nd.

That your Petitioner had but just been appointed when said motion was heard on June 22nd, 1923, and had not obtained permission of the New York Court to apply to intervene in the action, and that the present is the first application or appearance he has made in this suit.

That as Petitioner is advised and believes the Custodian and Treasurer of the United States, defendants herein, have no proper interest in the suit, since the award was made by the President, of restitution of the sequestered property to the judgment debtor, before the appointment of your Petitioner as Receiver, and on or about May 26th, 1922, the Government having relinquished all claim upon it by such award, except to see it go to the person or persons who may be justly entitled to the same.

Wherefore, your Petitioner prays that he be allowed to intervene and be made a party defendant in the above entitled suit for the purpose of asserting his right as Receiver to the sequestered property of the defendant Elizabeth Pratt de Gasquet James, as hereinabove set forth, or to be joined as a plaintiff herein for like purpose, as to the Court may seem fit.

And that he be given the right to plead herein within fifteen (15) days from the granting of the Order prayed for. And that the further trial of the suit, now set for October 2nd, be stayed until issue is joined on such pleadings as he may serve.

And for such other and further relief as may be just.

75

DAVID KEANE,
Receiver, &c.

J. NOBLE HAYES,
Atty. for Receiver Petitioner,
80 Maiden Lane, N. Y. City.

CITY AND COUNTY OF NEW YORK, *ss:*

J. Noble Hayes being duly sworn says that he is the attorney for the Receiver generally and upon the above application and resides at No. 111 East 17th St., New York City. That he has read the foregoing petition and knows the contents thereof and the same is true to his own knowledge except as to the matters therein stated to be alleged upon information and belief and that as to such matters he believes it to be true, and that the sources of his information were documents, writings, pleadings and minutes of evidence examined by him and by the Receiver and personal knowledge otherwise acquired as attorney for the plaintiffs in the above entitled action. That he has been authorized by the Receiver to sign his name to this Petition.

That the reason this Petition is not verified by the Receiver is that he is at present in France.

J. NOBLE HAYES.

Sworn to before me this 18th day of September, 1923.
[SEAL.]

JOHN LEAHY,
Notary Public, New York Co., No. 54.

New York County Register's No. 4115.
Commission Expires Mar. 30, 1924.

76 *Order Appointing Receiver of Property of Judgment-Debtor.*

Supreme Court, County of New York, State of New York.

Co. Clerk's No. 24,239/1923.

In the Matter of THE FARMERS LOAN & TRUST COMPANY, 3rd Party, In Proceedings Supplementary to Execution upon Application of GEORGE PRATT DE GASQUET JAMES, Judgment-creditor under a Decree and Judgment Rendered in the Surrogate's Court of Ulster County, New York, Entitled in the Matter of the Judicial Settlement of the Account of Proceedings of Elizabeth Pratt De Gasquet James, as Ancillary Executrix under the Will of Amadee De Gasquet James, Deceased.

An order having been made, by the Hon. John A. McAvoy, Justice of the said Supreme Court, herein on the 1st day of December, 1922,

in proceedings supplementary to execution requiring the Farmers Loan & Trust Company, a corporation organized under the laws of the State of New York, and doing business in the City of New York, to appear and make discovery on oath concerning the property
77 of the judgment-debtor Elizabeth Pratt de Gasquet James, in its possession, or under its control, and the said Third Party, the Farmers Loan & Trust Company, having appeared and been examined accordingly, and it appearing upon the conclusion of the said examination; and in Court upon the evidence taken and submitted, that there is good reason for the appointment of a Receiver of the property of the said judgment debtor herein; and the said judgment debtor, Elizabeth Pratt de Gasquet James, has not been served with Notice of the Application for this Order, because she was not within the State of New York, and now resides and has for many years resided in Europe; but that her attorney in fact, George M. Weaver, was served with due notice of the application for this Order; and notice of such application having been given to Pauline Andre de la Mettrie, a judgment creditor of the said Elizabeth Pratt de Gasquet James, who has Supplementary Proceedings pending upon her said judgment for the examination of George M. Weaver, in Oneida County, New York, and that no judgment creditor's action is pending against the said Elizabeth Pratt de Gasquet James in this State, and no Receiver of her property has been heretofore appointed, and that the said judgment remains in great part unsatisfied.

Now on motion of J. Noble Hayes, attorney for plaintiff and judgment creditor, and on his affidavit verified June 16th, 1923, I do hereby order that David Keane, Esq., Counselor at Law of No. 80 Maiden Lane, New York City, be, and I do hereby appoint him, receiver of all the property, debts, equitable interests, rights and things in action, effects and estate, real and personal, of the said defendant, judgment-debtor Elizabeth Pratt De Gas-
78 quet James; and I do further order that said receiver, before entering on the duties of his trust, do execute and acknowledge a bond with sufficient sureties to be approved by me, to the people of the State of New York, in the penalty of Two hundred and fifty Dollars ($250.00) conditioned for the faithful discharge of his duties as such receiver, and that upon filing said bond and this order as required by law, the said receiver shall be invested with all the rights and powers of a receiver as such according to law, and shall deposit all funds received in the American Exchange National Bank subject to the order of this Court.

And I do further order that there be allowed to the plaintiff, judgment creditor, the sum of $30.00 dollars cost, and I direct that the same be paid by said receiver to such judgment creditor, or his attorney herein out of the first moneys coming into said receiver's hands.

And the said defendant, judgment debtor Elizabeth Pratt de Gasquet James' agents, servants and attorneys, and the said Farmers Loan & Trust Company, and all others are hereby forbidden from

making or suffering any transfer or other disposition of or interference with the property of the said judgment debtor or in which she is in anywise interested, except in obedience hereto until further direction in the premises.

RICHARD P. LYDON,
Justice of Supreme Court.

Enter.
June 18, 1923.

A Copy.
[SEAL.] JAMES A. DONEGAN,
Clerk.

79

EXHIBIT B.

Before F. H. Hazard, Oneida County Judge.

In the Matter of the Examination of GEORGE M. WEAVER, Individually and as Trustee under the Will of Elizabeth Tibbitts, 3rd Party, in Proceedings Supplementary to Execution under Application of PAULINE ANDRE DE LA METTRIE, Judgment-creditor under a Decree and Judgment Rendered in a Proceeding in the Surrogate's Court of Ulster County, New York, Entitled: In the Matter of the Judicial Settlement of the Account of Proceedings of Elizabeth Pratt De Gasquet James as Ancillary Executrix under the Will of Amadee De Gasquet James, Deceased.

An Order having been made herein by me F. H. Hazard, a Judge of this Court on the 8th day of November, 1922 in proceedings supplementary to execution as above entitled requiring George M. Weaver to appear before D. Collis Wager Esq., Referee, appointed by said order and make discovery on oath concerning the property of the judgment-debtor Elizabeth Pratt de Gasquet James in his

80 possession or under his control, and the said 3d party George M. Weaver having duly duly appeared and been examined accordingly, and it appearing upon the said examination at its present stage of completion by the affidavit of J. Noble Hayes, Attorney for the Petitioner Judgment-creditor, and the preliminary report of the Referee, that the said George M. Weaver has property of the Judgment-debtor, Elizabeth Pratt de Gasquet James, of upwards of $10 dollars in value and exceeding that amount, and the same not being denied but being admitted by the said 3d party, and it appearing that there is good reason for the appointment of a receiver in this proceeding of the property of the said judgment-debtor, and the said judgment-debtor, Elizabeth Pratt de Gasquet James has not been served with notice of application for this order because she is not within the State of New York, and has for many years last past resided in Europe, but that her Attorney in Fact and agent, George M. Weaver, has been served and has accepted due notice of such application and due notice of this application having been given to George Pratt de Gasquet James, brother of the Peti-

tioner herein, and a like judgment-creditor of the said Elizabeth Pratt de Gasquet James, who instituted a proceeding supplementary to Execution against the said judgment-debtor upon the decree of the Surrogates Court of Ulster County, New York, against said debtor granted on November 3d, 1917, and upon the returns of an Execution unsatisfied by the Sheriff of the County of New York to whom it was issued out of said Court, to examine the Farmers Loan and Trust Company, a Corporation of, and doing business in the City of New York; and it further appearing that in
81 such proceeding an order was made by Hon. Richard P. Lydon, Justice of the Supreme Court and entered on June 18, 1923, in the office of the Clerk of New York County, appointing David Kean, Esq., Counsellor at Law of 80 Maiden Lane, New York City, Receiver of all the property, debts, equitable interests, rights and things in action effects and estate real and personal of the said judgment-debtor Elizabeth Pratt de Gasquet James, and ordering the said Receiver, before entering upon the duties of his trust to execute and acknowledge a bond with sufficient sureties to be approved by the said judge, to the people of the State of New York, in the penalty of $250 for the faithful discharge of his duties as such Receiver, and directing him to deposit all funds received by him in the American Exchange National Bank of the City of New York, subject to the order of the Court: and it further appearing that the said David Kean has performed all the acts necessary to qualify him as such Receiver.

Now upon reading and filing the affidavit of J. Noble Hayes, verified July 27th, 1923 and the preliminary report of D. Collis Wager, Esq., Referee and upon reading the Certified Copy of the Order of Mr. Justice Lydon of July 18, 1923 appointing David Kean, Esq. Receiver in the 3d Party supplementary proceedings brought by George P. de Gasquet James above referred to and the order herein of December 5, 1922, and after hearing J. Noble Hayes, Esq., in support of said application, and Hon. P. C. J. De Angelis Counsel for the said 3d party George M. Weaver and the said George M. Weaver, Esq.

I do hereby order that David Kean, Esq. Counsellor at
82 Law of 80 Maiden Lane, New York City, heretofore appointed Receiver in the proceedings supplementary to Execution by George Pratt de Gasquet James, to examine the Farmers Loan and Trust Company of New York, under a decree and judgment of the Surrogates Court of Ulster County against Elizabeth Pratt de Gasquet James, by Hon. Richard P. Lydon, a justice of the Supreme Court sitting in the County of New York, where such proceeding was instituted, be, and he hereby is, appointed Receiver herein of all the property, debts, equitable interests, rights and things in action, effects and estate real and personal of the said defendant judgment-debtor Elizabeth Pratt de Gasquet James and that the Receivership of the said David Kean be extended to this proceeding accordingly.

And I do further order that said Receiver before acting upon the

discharge of his duties do execute and acknowledge a bond with sufficient sureties to be approved by me, to the People of the State of New York in the Penalty of $100 or deposit a like sum of money in court as security in place thereof,

And that upon filing said bond or depositing said cash in court according to law the said Receiver shall be invested with all rights and powers of a receiver as such according to law, and shall deposit all funds received by him in the American Exchange National Bank of the City of New York, subject to the Order of the Court having jurisdiction thereof,

And I further Order that there be allowed to the plaintiff judgment-creditor, Pauline Andre de la Mettrie, the sum of $30 costs and disbursements consisting of the Stenographer's bill for min-
83 utes and Referee fees to be taxed by the undersigned and I direct that the same be paid by the said Receiver to such judgment-creditor or her Attorney herein, out of the first moneys coming into said Receiver's hands.

And the said 3d Party, having admitted on the hearing of this application for this Order in open Court, that he holds certain property of the judgment-debtor, as to which the ownership by the judgment-debtor is not in dispute, but the amount of which he is not at this time ready to state.

It is further Ordered that the petitioning judgment-creditor have leave to apply at the foot of this order upon notice to said 3d Party or his attorney when and as advised for a direction to turn over the same to the Receiver or for such other relief in the premises as may be just.

And it appearing that an error was inadvertently made in the title of this Proceeding, by entitling it in the Supreme Court of Oneida County, instead of in the County Court of Oneida County or before F. H. Hazard, Oneida County Judge, by whom the Order was made and so signed, on motion of the petitioning judgment-creditor, Ordered that the title to the said Proceeding be amended so as to make the caption read, Before the Hon. F. H. Hazard, Oneida County Judge.

And the said judgment-debtor Elizabeth Pratt de Gasquet James and George M. Weaver, individually or as Executor or Trustee, or in any capacity, and all agents, servants and Attorneys and
84 all other persons are hereby forbidden from making or suffering any transfers or other disposition of or interference with the property of the said judgment-debtor Elizabeth Pratt de Gasquet James, as provided in the Order herein dated Dec. 5th, 1922 or in which she is in anywise interested except in obedience hereto, or until further order in the premises.

Dated July 28, 1923.

F. H. HAZARD,
Oneida Co. Judge.

STATE OF NEW YORK,
Oneida County Clerk's Office, ss:

I, F. M. Rathbone, Clerk of said County, and of the Supreme and County Courts of Record, do hereby certify that I have compared the annexed copy of Order Extending Receivership and the endorsement thereupon with the original thereof, on file in this office, and that the same is a correct transcript therefrom, and of the whole of said original.

In witness whereof, I have hereunto set my hand, and affixed the seal of said County and Courts, at the City of Utica, this 7 day of Aug., 1923.

F. M. RATHBONE,
Clerk.

R. J. JEWETT,
Deputy Clerk.

STATE OF NEW YORK,
Oneida County Clerk's Office, ss:

I, F. M. Rathbone, Clerk of said County, and of the Su-
85 preme and County Courts therein, the same being Courts of Record, do hereby certify, that I have compared the annexed copy of Order and the endorsements thereupon with the original thereof, on file in this office, and that the same is a correct transcript therefrom, and of the whole of said original.

In witness whereof, I have hereunto set my hand, and affixed the seal of said County and Courts, at the City of Utica, this 18th day of Aug., 1923.

[SEAL.]

F. M. RATHBONE,
Clerk.

R. J. JEWETT,
Deputy Clerk.

Oneida County Court. County of Oneida. In the Matter of the Examination of George M. Weaver, Individually and as Trustee under the Will of Elizabeth Tibbitts, 3rd Party, in proceedings supplementary to execution and application of Pauline Andre de la Mettri, Judgment-Creditor under a decree and judgment rendered in a proceeding in the Surrogate's Court of Ulster County, New York, entitled In the Matter of the Judicial Settlement of the Account of
Proceedings of Elizabeth Pratt de Gasquet James as Ancillary
86 Executrix under the Will of Amadee de Gasquet James, Deceased.

I, F. M. Rathbone, Clerk of the County Court, in and for the County of Oneida and also Clerk of Oneida County, do certify that David Keane as receiver in the above entitled proceeding has deposited in court the sum of $100.00, as security in place of a bond, in conformity with and as directed by the order of Hon. F. H. Hazard, Oneida County Judge, dated July 28th, 1923, and on file in this office.

[SEAL.]

F. M. RATHBONE,
Clerk of Oneida County and of the Oneida County Court.

Dated, Utica, N. Y., August 18, 1923.

87 EXHIBIT C.

At a Special Term of the Supreme Court of the State of New York held in and for the City and County of New York, at the County Court House, in said City, on the 13th day of July, 1923.

Present: Hon. George V. Mullan, Justice.

In the Matter of the Examination of THE FARMERS LOAN & TRUST COMPANY, 3rd Party, in Proceedings Supplementary to Execution upon Application of GEORGE PRATT DE GASQUET JAMES, Judgment-creditor under a Decree and Judgment Rendered in the Surrogate's Court of Ulster County, New York, Entitled In the Matter of the Judicial Settlement of the Account of Proceedings of Elizabeth Pratt de Gasquet James as Ancillary Executrix under the Will of Amadee de Gasquet James, Deceased.

On reading and filing the Petition of David Keane, heretofore and on June 16th, 1923, appointed Receiver of the property of Elizabeth Pratt de Gasquet James, judgment-debtor above named, for leave to bring an action upon a claim amounting to upwards of $65,000 upon a judgment now due to George Pratt de Gasquet James from
88 the said Elizabeth Pratt de Gasquet James, formerly of Esopus, New York, and now residing in Dinard, France, or to intervene in an action now pending in the Supreme Court of the District of Columbia by the said George Pratt de Gasquet James and Pauline Andre de la Mettrie against the said judgment-debtor and Thomas W. Miller, Alien Property Custodian of the United States and Frank White, Treasurer of the United States, and to join such other persons as he may be advised are necessary, and to institute such other actions or proceedings for the recovery of the said claim, and also for leave to bring a similar action or actions or proceedings in behalf of Pauline Andre de la Mettrie, judgment-creditor, having a claim arising out of a judgment recovered by her against the said Elizabeth Pratt de Gasquet James of upwards of $65,000 upon the extending of the Receivership to the petitioner in a certain third party proceeding brought by Pauline Andre de la Mettrie against George M. Weaver, third party, in whose possession property of the judgment debtor has been discovered, in accordance with provisions of Sections 806 and 807 of the Civil Practice Act of the State of New York, and this Court deeming such Petition to contain and allege sufficient facts to authorize such action, and it appearing that said Receiver has complied with the requirements of Rule 177 of the Rules of Civil Practice of the State of New York.

Now on motion of J. Noble Hayes, attorney for said receiver, it is hereby

Ordered that the said David Keane, as Receiver aforesaid, is hereby authorized and directed to commence and prosecute, in his dis-
89 cretion, an action in the Supreme Court of the District of Columbia or other Court having jurisdiction against Elizabeth

Pratt de Gasquet James, Thomas W. Miller, Alien Property Custodian of the United States, Frank White, Treasurer of the United States, and such other persons as he may be advised are necessary in the premises, to restrain the turning over of certain property in the hands of the judgment-debtor, and for other relief; or, and if so advised, to intervene in an action now pending in said Supreme Court of the District of Columbia brought by Pauline Andre de la Mettrie and George Pratt de Gasquet James against Elizabeth Pratt de Gasquet James and others, to recover the property of the said Elizabeth Pratt de Gasquet James, sequestered by the Alien Property Custodian during the late war, and also to joint in such action or intervention in behalf of the said claim of the said George Pratt de Gasquet James the claim of Pauline Andre de la Mettrie, a like judgment-creditor, if and when the said receivership shall be extended to a third party proceeding pending in Oneida County, New York, against one George M. Weaver, agent of the judgment-debtor, in whose possession property of the said judgment debtor has been found, for the recovery of the claims of both or either of the said George Pratt de Gasquet James and Pauline Andre de la Mettrie, and in such form as counsel may be advised.

Enter.

G. V. M., *J. S. C.*

A copy.

JAMES A. DONEGAN,
[SEAL.] *Clerk.*

90 No. —.

STATE OF NEW YORK,
County of New York, ss:

I, James A. Donegan, Clerk of the said County and Clerk of the Supreme Court of said State for said County, Do Certify, That I have compared the preceding with the original Order on file in my office, and that the same is a correct Transcript therefrom, and of the whole of such original.

In witness whereof, I have hereunto subscribed by name and affixed my official seal, this 19th day of July, 1923.

[SEAL.] JAMES A. DONEGAN,
Clerk.

Indorsed: Filed July 13th, 1923.

Affidavit of Dean Hill Stanley.

Filed October 2, 1923.

* * * * * * *

Now comes Dean Hill Stanley, and being duly sworn according to law deposes and says:

That he is a Special Assistant to the Attorney General of the United States, and as such he has had referred to him numerous cases brought

pursuant to the Trading with the Enemy Act, as amended; that he is attorney for Thomas W. Miller as Alien Property Custodian and Frank White as Treasurer of the United States in the above-
91 entitled cause; that he has examined the files of the Department of Justice and of the Alien Property Custodian relating to the claim of Mme. Elizabeth Pratt de Gasquet James, filed under Section 9 of the said Act, and that he has been unable to find any record in the files of either the Department of Justice or the Alien Property Custodian which shows that the claim of the said Mme. James has ever been acted upon by the Attorney General of the United States, or by the President of the United States, or by any other officer charged with the duty of acting upon such claim or having authority so to act; that, upon information and belief, he denies that the claim of the said Mme. James has ever been allowed by the Attorney General of the United States, by the President of the United States, or by any other officer of the United States authorized to allow such claim.

DEAN HILL STANLEY.

Sworn to and subscribed before me this second day of October, A. D. 1923.

MORGAN H. BEACH,
Clerk Supreme Court, D. C.
By H. B. DERTZBAUGH,
Assistant Clerk.

92 *Affidavit of J. Noble Hayes.*

Filed October 2, 1923.

* * * * * * *

DISTRICT OF COLUMBIA, *ss:*

J. Noble Hayes being duly sworn says that he is one of the attorneys and counsel in the above-entitled cause.

That the said cause was brought on for trial before Chief Justice McCoy at the equity term on February 15, 1923, before the return of Letters Rogatory issued out of this Court on October 30, 1922, in the name of the President of the United States to the Minister of Justice of the French Republic, at the instance of the Attorney General to examine on behalf of the defendant Custodian and Treasurer and take the deposition, upon interrogatories attached, of Pierre Lepaulle, a French lawyer, in which the plaintiffs joined upon interrogatories to take the deposition on their behalf of Reni Pellerin, a French lawyer of international repute. That the questions of law which were propounded to the said lawyers related to the accord of reciprocal rights by the French Government to American citizens to make claims to enemy property sequestered by the French Government during the war, corresponding to those accorded to French citizens by the American Trading with the Enemy Act, the said defendants claiming that France had not accorded such reciprocal

rights, and that therefore the plaintiffs suit must be dismissed under the Amendment of the Act of June 5, 1920, Sec. 9 (*e*): and
93 so claiming at the present time; and the defendants claiming that the French Government had accorded such reciprocal rights to American citizens.

That after the trial had proceeded before Chief Justice McCoy for several hours, he adjourned the case to a future day *to be agreed upon after* the Letters Rogatory should be returned from France.

That on April 11, 1923, deponent received a letter from the State Department saying that the Letters Rogatory had not been executed, enclosing a copy of a letter from Ambassador Herrick and a copy of a letter from the French Minister of Justice, saying that it did not appear possible to execute the Letters Rogatory for the reason that "they aim, in fact, at obtaining from two above-named persons information of a purely doctrinal character relative to hypothesis concerning established methods of legal procedure."

That thereafter and on June 22nd, 1923, the defendant James moved the case for trial before Chief Justice McCoy, hoping to obtain a dismissal of the same. That deponent opposed the motion upon the ground that the case could not be fairly tried until commissions could be sent out to France (as deponent had at first advised the Attorney General who insisted upon Letters Rogatory) to take the depositions of the two lawyers upon interrogatories attached.

That Judge McCoy denied the motion, but at the earnest solicitations of the defendant James set it down peremptorily for October 2nd, 1923. And the defendants thereafter entered an order *ex parte* to that effect.

94 That on June 18, 1923, David Keane was appointed Receiver of all the property of the judgment debtors—defendant James in a supplementary proceeding in the New York Supreme Court by the plaintiff herein George Pratt de Gasquet James and qualified a few days thereafter: and was likewise appointed Receiver in a similar proceeding in the County Court of Oneida County, New York, brought by Pauline Andre de la Mettrie, plaintiff herein, and qualified therein on or about August 13, 1923.

That on June 27, 1923, deponent wrote to Frederick Geller, Esq., the defendant James' leading counsel as follows, in fact:

"* * * I suggest that I will join with you and the Attorney General in sending out a commission to France at once (as I proposed last fall) to take the depositions of Pierre Lepaulle on behalf of the defendants, and Rene Pellerin on behalf of the plaintiffs.

I am informed that Madame James has no longer any legal interest in the sequestered property in this Custodian's and Treasurer's hands, which she claims under the award of the Attorney General of May 26, 1922. * * * How far this will affect Madame James' further proceedings in the suit or the action of the Government I am unable to say."

Mr. Geller did not see fit to move in the matter, and continued to urge the acceptance of an offer of settlement of the controversy, of

which the present suit is a part, which Mrs. James' counsel in Paris had submitted to deponent through Mr. Geller on June 12, 1923.

The Receiver served a certified copy of the order appointing him on the Attorney General, the Custodian and Treasurer of the United States, on or about June 31st and received acknowledgments of the same on June 26th and July 3rd.

That on August 17th deponent as attorney for the Receiver
95 wrote a long letter to the Attorney General referring to Receiver's appointment and the allowance of Mrs. James' claim to the sequestered property on May 22nd, 1922, by the Attorney General, and asking what he had decided to do about turning this property over to Mrs. James' Receiver, which matter he had written the Receiver on June 26, 1923, he had under advisement.

On August 23rd the Attorney General wrote deponent that he had received deponent's letter of the 17th of August, and that unless there was some urgency in the matter, it would be held awaiting the return of the Deputy Attorney General Stanley, who was away on his vacation and would return early in September.

On August 10th deponent prepared and mailed to his representatives in Washington, Butler & Kratz, all the papers for taking out a commission to examine Rene Pellerin, and copies of the former interrogatories attached to the Letters Rogatory to defendant's witness Pierre Lepaulle, asking him to obtain the consent of the Attorney General and other counsel and have the commission issued and sent to Paris at once.

Word came back that the Deputy in charge, Mr. Stanley, was on his vacation and the matter was subsequently taken up and the commission sent out by consent to Rene Pellerin on August 29th, the Attorney General's Office having decided at this late day that they would not send out a commission to France to take the deposition of the witness Pierre Lepaulle for reasons which hereinafter appear.

On September 21st the Attorney General's Office notified
96 deponent over the long distance telephone that they would take the deposition of Pierre Lepaulle, who was in this country, on Tuesday, September 24th, in the City of New York; that deponent spent the entire day in attendance upon the taking of the deposition, which was to be written out the same night and next day and a copy furnished deponent after it had been read and signed by the witness. That deponent did not receive a copy of the same which is long and technical and will require careful study before the trial.

That Pierre Lepaulle has been in this country since on or about August 25, as deponent is informed and believes.

That deponent cabled the husband of his client Countess de la Mettrie to know when the deposition of Rene Pellerin would be returned and received an answer by cable several days ago saying deposition would be taken before Ambassador Herrick on September 25th, which means that it will reach here about October 15th.

The defendants have contrived to arrange the matter of these depositions so as to get the depositions of their own expert at the

last moment, and delay the sending out of plaintiffs commission for at least fifteen days, when its return in time for October 2nd will be practically impossible, so that if permitted to succeed their testimony on this point in the case will be uncontradicted, a result not designed to secure the ends of justice.

That the situation has changed since Justice McCoy made his order on June 22nd. He was not advised then of the appointment of the Receiver, nor was he advised of the allowance of
97 Madame James' claim to the sequestered property by the Government under the Amendment of June 5, 1920, which fact had not been proven at the time the trial was suspended.

That the Government of the United States and the Custodian and the Treasurer have no real interest in the sequestered property which has been awarded to Mrs. James by the allowance of her claim, the payment of which was stayed by the suit.

That Madame James the defendant judgment-debtor will have no right to the same if the Receiver of the State of New York Supreme Court is recognized and brought in by the Court and established his claim in the suit.

J. NOBLE HAYES.

Subscribed and sworn to before me this 29th day of September A. D. 1923.

[SEAL.]

JOS. P. RUDY,
Notary Public, D. C.

Order Denying Leave to Intervene.

Filed December 17, 1923.

* * * * * * *

Upon consideration of the motion of David Keane, receiver, by his attorneys, Barnard & Johnson, for leave to intervene in this cause and to file his petition therein, and that the receiver be made a party plaintiff or defendant in the cause, after hearing arguments of counsel for all the parties, it is by the Court this 17th day of December, 1923,

98 Adjudged, ordered and decreed that the said motion for leave to intervene be and the same hereby is denied.

WALTER I McCOY,
Chief Justice Supreme Court of the District of Columbia.

From the foregoing decree the Receiver David Keane, in open court notes an appeal to the Court of Appeals of the District of Columbia, and the penalty of the undertaking for costs thereon is fixed at one hundred dollars or in lieu thereof a cash deposit of fifty dollars.

WALTER I. McCOY, *C. J.*

Memorandum.

December 19, 1923.—$50 deposited by Intervening Petitioner in lieu of appeal bond.

Assignments of Error.

Filed January 10, 1924.

* * * * * * *

The petitioner, appellant herein, David Keane, Receiver, in supplementary proceedings, appointed by order of the Supreme Court of the State of New York, makes the following assignments of error to the Order made herein on the 17th day of December, 1923, appealed from.

99 1. That the learned Trial Court erred in denying the petition of the appellant David Keane, Receiver, to intervene in the said action.

2. That the Court erred in denying said petition as a matter of right.

3. That the Court erred in denying said petition as a matter of discretion.

4. That the Court erred in entering the Order appealed from denying the petition of Receiver.

J. NOBLE HAYES,
GUY H. JOHNSON,
Attorneys for Appellants.

Designation of Record on Appeal.

Filed February 11, 1924.

* * * * * * *

To the Clerk of the Supreme Court of the District of Columbia.

SIR:

Please prepare record for filing in the Court of Appeals of the District of Columbia in the above-entitled cause and include the following papers:

1. Amended bill.
2. Answer of defendants Thomas W. Miller, Alien Property Custodian, and Frank White, Treasurer of the United States.
3. Answer of the defendant Elizabeth Pratt de Gasquet James.
4. Motion and Petition of David Keane, Receiver.
5. Affidavit of Dean H. Stanley verified October 2nd, 1923.

100 6. Affidavit of J. Noble Hayes verified October 12, 1923.

7. Order denying leave to intervene.
8. Allowance of appeal.
9. Note of deposit in lieu of bond.
10. This designation of record.

J. NOBLE HAYES,
Attorney for Petitioner.

Messrs. Frank Davis, Jr., S. M. Stellwagen, William J. Neale, Frederick Geller, Attorneys for defendant Elizabeth Pratt de Gasquet James; Dean Stanley, Attorney for Defendants Thomas W. Miller, Alien Property Custodian and Frank White, Treasurer of the United States.

GENTLEMEN:

Attached hereto please find copy of designation of record in the above-entitled appeal.

J. NOBLE HAYES,
Attorney for Plaintiffs.

G. H. J.

Service of copy of above designation of record acknowledged this sixth day of February, 1924.

WM. J. NEALE,
Of Attorneys for Defendant Elizabeth Pratt de Gasquet James.
DEAN HILL STANLEY,
Attorney for Defendants Thomas W. Miller, Alien Property Custodian, and Frank White, Treasurer of the United States.

101 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Morgan H. Beach, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 64, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 39090 in Equity, wherein Pauline Andre De La Mattrie et al. are Plaintiffs and Elizabeth Pratt De Gasquet James, et al. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 20th day of March, 1924.

[Seal of Supreme Court of the District of Columbia.]

MORGAN H. BEACH,
Clerk.

EW.

102 Filed Feb. 11, 1924. Morgan H. Beach, Clerk.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity No. 39,090.

PAULINE ANDRE DE LA METTRIE and GEORGE PRATT DE GASQUET JAMES, Plaintiffs,

vs.

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, Alien Property Custodian, and Frank White, Treasurer of the United States, Defendants.

Messrs. Frank Davis, Jr., S. M. Stellwagen, William J. Neale, Frederick Geller, attorneys for defendant Elizabeth Pratt de Gasquet James; Dean Stanley, attorney for defendants Thomas W. Miller, Alien Property Custodian, and Frank White, Treasurer of the United States.

GENTLEMEN:

Attached hereto please find copy of proposed Statement of Evidence in the above entitled cause to be submitted for settlement by the plaintiffs Pauline Andre de la Mettrie and George Pratt de Gasquet James to the Equity Court, Mr. Chief Justice McCoy presiding, on Tuesday, the 29th day of January, 1924, at 10:00 o'clock A. M. or so soon thereafter as counsel can be heard.

J. NOBLE HAYES,
Attorneys for Plaintiffs.

801 Evans Bldg.

Service of copy of above motion and proposed Statement of Evidence acknowledged this 19th day of January, 1924.

WM. J. NEAL,
Of Attorneys for Defendant Elizabeth Pratt de Gasquet James.
DEAN HILL STANLEY,
Attorney for Defendants Thomas W. Miller, Alien Property Custodian, and Frank White, Treasurer of the United States.

103 Supreme Court of the District of Columbia, Holding an Equity Court

In Equity.

39090

PAULINE ANDRE DE LA METTRIE and GEORGE PRATT DE GASQUET JAMES, Plaintiffs-Appellants,

against

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, as Alien Property Custodian, and Frank White as Treasurer of the United States, Defendants, Appellees.

Be it remembered that at an equity term of the Supreme Court of the District of Columbia in the Court House in the City of Washington, before the Hon. Walter I. McCoy, Chief Justice of said Court, on the 15th day of February, 1923, and subsequent days to which the said cause was adjourned, to wit, October 2nd, November 7th and December 1st, 1923, the aforesaid issues came on to be tried on the first of the aforesaid days, and was opened on behalf of the plaintiffs by J. Noble Hayes, Esq., their counsel; and by Frederick Geller, Esq., counsel for the defendant Elizabeth Pratt de Gasquet James, S. M. Stellwagen, Esq., Frank Davis, Jr., and William J. Neale, Esq., appearing with him for said defendant; and on behalf of Thomas W. Miller, Alien Property Custodian, and Frank White, Treasurer of the United States by Dean Hill Stanley, Special Assistant to the Attorney General.

And thereupon, the plaintiffs, to maintain the issues on their part, offered and introduced the following:

PLAINTIFFS' EXHIBIT I.

A duly authenticated certificate of the birth of the plaintiff, George Pratt de Gasquet James, in the town of Esopus, New York, on June 28th, 1885, under the seal of the Commissioner of
104 Health of the State of New York. Admitted without objection.

Mr. Hayes: I offer two certificates under seal, duly authenticated, of the French citizenship of Countess de la Mettrie and of George Watson Pratt de Gasquet James, who transferred his citizenship in 1916 to France to get into the Army and help fight for America.

Mr. Stanley: I object preliminarily to this because it is not translated; secondly it is not properly authenticated.

The Court: Of course, the first objection is good.

Mr. Hayes: It is in the stipulation between Mr. Geller and myself.

Mr. Stanley: I am not in that stipulation. It may be all right, but I want it at least translated.

The Court: Mr. Hayes I will have to sustain the objection on both grounds. Of course, it cannot be admitted being in French, and I do not think it is properly authenticated. I will have to see the Statute about authentication.

Mr. Hayes: Your Honor, we can have that translated. Mr. Geller has admitted that in the stipulation.

The Court: It can be admitted as against his client, but I will have to sustain the objection of the Custodian.

Mr. Hayes: Will you give us an opportunity then to have it translated because the Custodian makes a point that it is necessary for us prove that they are French citizens? Now, I know they are French citizens. I have corresponded with them and been their attorney for years, and I have known them ever since they were children. George Watson Pratt de Gasquet James put in my hands after we got into the war, an application to have his American citizenship restored but it required that he get out of the Army and take a trip
105 over here and he gave it up.

The Court: Well, so far as Mr. Geller's client is concerned, if you will have the translation of this read into the record it may be admitted notwithstanding its lack of proper certification, but so far as the Alien Property Custodian is concerned I will have to sustain the objection.

Plaintiffs' Exhibit II.

The certificates were read into the record as follows:

Mr. Geller (translating): The Mayor of Ille-et-Vilaine certifies that Madame Pauline Andre de la Mettrie, born on the 1st day of March, 1887, at Esopus, State of New York, North America, the wife of Monsieur Henri Joseph Viscount de la Mettrie, residing at Dinard, Ville Viviane, is of French nationality. Dated the 16th day of December, 1922. The Mayor and his signature and seals, legalization of signature, the certificate of Monsieur Thorel of the Commune of Dinard, St. Malo, the 16th day of December, 1922.

The Mayor of Dinard certifies that Monsieur George Watson Pratt de Gasquet James of American nationality, born on the 28th day of June, 1885, at Esopus, United States of America, unmarried, domiciled at Dinard and at Ville Viviane, has become a French citizen by decree number 14,062 ex 14 under date of the 10th of December, 1915, Dinard, the 21st day of December, 1922.

(Signature and certification as in foregoing certificate.)

Plaintiffs' Exhibit III.

Certified copy of Decree of the Surrogates Court of Ulster County, New York, dated and entered the 21st day of March, 1915, in the matter of the application of George Watson Pratt de Gasquet James and another for the revocation of Ancillary Letters Testa-
106 mentary heretofore granted to Elizabeth Pratt de Gasquet James, Ancillary Executrix, (now Mecklenburg) under the

Will of Amadee de Gasquet James, deceased, and for an accounting, etc., reciting the issuance of citations upon the petition of the petitioners and the appearance of the respondent, Elizabeth Pratt de Gasquet James, executrix, on December 17th, 1913, therein, and stating the said account and charging the said Elizabeth Pratt de Gasquet James, executrix, for a deficiency in her said account in the sum of $253,756.98, and directing a distribution of the said estate, still in her possession, and under her control, and apportioning the said deficiency found due by her to the said estate of $253,-756.98 to the various persons interested in the said estate, including the plaintiffs herein, and directing the said Elizabeth Pratt de Gasquet James to pay over the sum of $69,754.85 each to Pauline Andre de la Mettrie and George Pratt de Gasquet James, plaintiffs herein, as their share of such deficiency, and that each of them have Judgment for the same, and further ordered, adjudged and decreed, among other things, "that if the said executrix shall fail to make such payments within sixty days after the entry of this decree, or if for any reason it becomes necessary for the purpose of carrying out the provisions of this decree, in effect, any of the parties hereto may apply at the foot of this decree. upon ten days' notice, to the persons and guardian herein, for such further order or other relief in the premises as may be necessary and proper".

Decree of which the foregoing is a synopsis read into the record without objection.

107 PLAINTIFFS' EXHIBIT IV.

Certified copy of the Decree of the Surrogate's Court of Ulster County, New York, dated November 3rd, 1917, in the matter of the judicial settlement of account of proceedings of Elizabeth Pratt de Gasquet James as Ancillary Executrix under the Will of Amadee de Gasquet James, deceased, modifying and affirming the former decree in the said proceeding of March 21st, 1915, after an appeal to the Court of Appeals, and resettling the said former decree as directed by the Court of Appeals, and reducing the amount of the deficiency judgment against the said Elizabeth Pratt de Gasquet James, executrix, from $253,756.98 to $236,947.98, and directing the said executrix, among other things, to pay to George Watson Pratt de Gasquet James and Pauline Andre de la Mettrie, the sum of $65,133.25 each, with interest thereon from March 21st, 1915, and further

Ordered, Adjudged and Decreed that, except as modified, the said decree of March 21st, 1915, be and the same hereby is in all respects affirmed.

Decree of which the foregoing is a synopsis read into record without objection.

PLAINTIFFS' EXHIBIT V.

Certified copy of transcript of foregoing decree of November 3rd, 1917, in favor of the plaintiffs and another, out of the Surrogate's

Court of Ulster County, New York, to the County Clerk's Office of the County of New York, and filed thereon in December 20th, 1919. Admitted. Marked Plaintiffs' Exhibit V.

PLAINTIFFS' EXHIBIT VI.

Certified transcript and return endorsed thereon of the execution issued out of the Surrogate's Court of Ulster County, New York, against the property of the said Elizabeth Pratt de Gasquet James, upon the decree and judgment of the said Court, to the Sheriff of the City and County of New York, in favor of the said George Pratt de Gasquet James, et al., in the sum of $65,133.25, each, with interest from March 21st, 1915, dated the 26th day of February, 1921, and lodged with the said Sheriff on March 4th, 1921, and duly returned by him into the Surrogate's Court wholly unsatisfied.

Admitted Plaintiffs' Exhibit VI.

PLAINTIFFS' EXHIBIT VII.

A similar certified transcript and return endorsed thereon of the execution issued out of the Surrogate's Court of Ulster County, New York, against the property of the said Elizabeth Pratt de Gasquet James, upon the decree and judgment of said Court, to the Sheriff of the City and County of New York, in favor of said Pauline Andre de la Mettrie, et al., in the sum of $65,133.25, with interest thereon from March 21st, 1915, dated the 26th day of February, 1921, and lodged with said Sheriff on March 4th, 1921, and duly returned by him into said Surrogate's Court wholly unsatisfied. Admitted, Marked Plaintiffs' Exhibit VII.

PLAINTIFFS' EXHIBIT VIII.

A similar property execution issued out of the Surrogate's Court of Ulster County, New York, to the Sheriff of the City and County of New York, on March 25th, 1920, in favor of George W. Pratt de Gasquet James, in the sum of $65,133.25, with interest from March 21st, 1915, against Elizabeth Pratt de Gasquet James, judgment-debtor, and lodged with the Sheriff on May 26th, 1920, and duly returned into said Surrogate's Court wholly unsatisfied. Admitted, marked Plaintiffs' Exhibit VIII.

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PLAINTIFFS' EXHIBIT IX.

A similar execution to the one above described issued out of the said Surrogate's Court to the Sheriff of the City and County of New York, upon the decree above described in favor of Pauline Andre de la Mettrie against the said Elizabeth Pratt de Gasquet James, judgment-debtor, in the sum of $65,133.25, with interest thereon from March 21st, 1915, lodged with the Sheriff on May 26th, 1920, and

duly returned wholly unsatisfied. Admitted, Marked Plaintiffs' Exhibit IX.

The foregoing Exhibits VI, VII, VIII and IX were admitted in evidence over the objection of Mr. Stanley.

Admitted by the defendants that the plaintiffs filed their respective verified claims under Section 9 of the Trading with the Enemy Act for the recovery of the claim or debts of the plaintiffs with the Alien Property Custodian on or about April 22nd, 1920, and on May 29th, 1920, application was made to submit the matter to the President and that the said claims were disallowed on or about July 29th, 1920.

Mr. Hayes: I will offer now a certified copy of a communication received by the State Department, and under the signature and seal of the Secretary of State, from the French Government—from the French Embassy, dated the 11th of December, 1922, with the translation by the State Department.

Mr. Stanley: Let me object to that, first on this ground—I think I know what is in the letters. Not that these are not correct copies of the letters that the State Department has received. Of course, the authentication clears that. But that you cannot prove what is in these letters by the mere statement from the French Embassy, namely, the French law as to reciprocity; that it is a mere piece of paper in the State Department, it is irrelevant, and therefore, I object to its introduction into evidence.

110 The Court: That statement there of the foreign department, whatever it may be in France, that the French Government does extend reciprocal relations, or relations reciprocal to that provided for in the act, is nothing but a conclusion, and is not an executive decree, according to what you say. I don't know what they do, unless it be by some form of legislation, but it they have power to do it by decree of the president or council, or whatever it may be, a copy of that ought to be annexed so that it may be determined whether or not—if there are no decisions further interpreting, it seems to me—as to what it means, as a matter of language, it seems to me. I am not informed, I will hear it for that purpose.

111 (PLAINTIFFS' EXHIBIT XI FOR IDENTIFICATION.)

Embassy of the French Republic to the United States.

Washington, December 11, 1922.

MR. SECRETARY OF STATE:

I had the honor in a note of May 12, 1921, to draw your Excellency's attention to the injury that might be caused to certain French citizens by their being put under the operation of a clause of the Trading with the Enemy Act, which would not permit them to ask for payment of their claims, the validity of which was recognized by American courts before the United States entered the war, and affecting property since taken into custody by the American Government as enemy property, unless the Government of the Republic

should by way of reciprocity allow under the same conditions the American citizens to collect claims that they might have on enemy property sequestrated in France.

In the same note I informed Your Excellency that my Government would grant such reciprocity.

I had made the foregoing inquiry of my Government in connection with the difficulties met by Mr. George Pratt de Gasquet James and the Countess Andre de la Mettrie, to whom the Custodian of the United States denied the execution of a judgment in their favor in 1905 by the courts of New York, authorizing them to collect claims of theirs on the estate of their mother, Elizabeth Pratt de Gasquet James, of American birth, wife of the Duke of Mecklembourg, whose property was taken in custody when the United States entered the war. The ground for the refusal was that the French Government had not admitted the American citizens rights to collect claims on enemy property sequestrated in France.

I thought that as a consequence of my above mentioned note of May 12, 1921, the judicial authorities of America would desist from their opposition in the case under consideration; but having
112 been informed by the counsel of Mr. de Gasquet James and of the Countess de la Mettrie that the said authorities did not deem the reciprocity assurances given by me sufficient, I asked my government to enable me to state more precisely the scope of the reciprocity it granted.

This more precise statement has just been given me and in compliance with instructions receiver, I have the honor to give to Your Excellency the assurances that the French Government grants to American nationals reciprocity as it is meant in the American Trading with the Enemy Act, Section 9, and that in particular an American national holding a claim against a former enemy whose property was sequestrated in France, the validity of the claim having been acknowledged by a judgment of a French court, may seek the execution of that judgment on the property coming under the sequestration up to the assets of the said sequestrated property.

I should be thankful to Your Excellency if you would kindly give notice of this fact to the Attorney General of the United States so that the claims of Mr. Gasquet James and of the Countess de la Mettrie may be admitted as early as possible.

Be pleased to accept, Mr. Secretary of State, the assurances of my high consideration.

(Signed) JUSSERAND."

113 The Court: We do not need to go into that now. I think I will have to sustain the objection. There is a well known way of proving a foreign law, and that is by those who are learned in that law. I did not even know that Mr. Jusserand is a lawyer.

Letter excluded.

Exception by Plaintiffs.

(Marked Plaintiffs' Exhibit XI for Identification.)

Trial resumed October 2nd, 1923.

A motion which had been made by David Keane, a Receiver in supplementary proceedings of all the property of Elizabeth Pratt de Gasquet James, duly appointed by the New York Supreme Court, which was brought on in regular order at an equity term of the Court, before Mr. Justice Hoehling, and referred by him to Chief Justice McCoy, was, at this point, heard by the Chief Justice and de-
114 nied by him in the following language:

"I shall deny the motion for leave to intervene and you may take an exception."

An answering affidavit was subsequently filed by the Attorney General and a reply affidavit on behalf of the Receiver by permission of the Court.

An Order was thereafter made and entered by the Court denying the application of the Receiver on the 17th day of December, 1923. From which order a separate appeal has been taken and allowed in open Court by the Receiver to the Supreme Court of the District of Columbia.

Mr. Hayes: I want to make a motion in this case on behalf of the plaintiffs to amend our bill of complaint for the purpose of adding as a co-defendant David Keane, Receiver, under the order of the Court of the State of New York. I want to make that motion because I deem that the receiver has certain rights here now in this property.

The Court: That would be the same thing in another aspect. There was a motion to make him a party to the action. I do not see any difference.

Mr. Hayes: Now we come in here and ask that we be permitted to amend our bill by setting up facts to show that these funds have been awarded to Madame James and that her receiver has been appointed, and that her receiver has an interest here in anything that may be awarded to her.

The Court: Well that is practically the same motion that was argued this morning, and I will deny it.

Mr. Hayes: The motion was made then on behalf of the receiver himself. We now make the motion as plaintiffs in the action, to have the receiver made a party defendant in the suit.

The Court. The motion is denied.

Mr. Hayes: And may I have an exception to that? We want to preserve the question.

115 The Court: Yes.

Mr. Hayes: I have asked you, Mr. Stanley, to produce the papers from your office, which you agreed to produce yesterday without subpœna—all the papers: First, the claim filed by Madame James on December 24, 1920.

Mr. Stanley: Now, if the Court please, I have everything that the Alien Property Custodian or the Department of Justice has, here, but unless the Court orders me to produce that file, I do not propose to produce it, and I want the privilege of arguing that point before I am

compelled to produce it, as not having any bearing on this case whatever.

(After arguing it:)

The Court: All right. Now, you are calling for something from the Attorney General's office to prove that she was an alien enemy, or to prove that she was not?

Mr. Hayes: I am going to prove by that she was an alien enemy who was restored to her rights in this property.

The Court: By the order?

Mr. Hayes: Yes, by the Attorney General.

The Court: You want a document which you say calls for the restoring of her to her American rights. Mr. Stanley says that there is no such document there. That disposes of that. What is the next document?

The Court: I come back to the proposition or as to the propriety of the production of the papers.

Mr. Hayes: I do not ask for the production. They are here, and I offer them in evidence.

The Court: They may be in Court. They are subject to being produced.

Mr. Hayes: Just as if they were under subpœna duces tecum. That is the situation.

(Objection by the Attorney-General as irrelevant and privileged.)
116

The Court: I have got to go by the stipulation. If the stipulation does not say that they are to be produced and offered in evidence without objection, I have got to take merely that the stipulation was used as a smooth way to get those papers here, rather than a somewhat frictional way of issuing a subpœna duces tecum.

Mr. Stanley: Mr. Hayes said he wanted all these papers down here, and asked me if I would bring them without the necessity of a *d*ubpœna duces tecum. I said, "Mr. Hayes, as far as the actual presence of those papers in the court room is concerned I will have them here, but I propose to object to having to produce any of those papers, or to the introduction of them into evidence." That is the last thing I said.

Mr. Hayes: That is just what occurred between us. Now he was also under the same stipulation to produce the papers from the files of the Alien Property Custodian.

Mr. Stanley: I will raise the same objection to producing those.

The Court: All right. The papers are here I understand. Now call for whatever paper you want.

Mr. Hayes: Well, I call for the same paper on file in the Alien Property Custodian's office. The same ruling. I call for the paper on file in the Alien Property Custodian's office, filed December 24th, 1920.

Mr. Geller: I object to it as irrelevant under the pleading here.

Mr. Stanley: I object, if the Court please, to being compelled to produce it.

The Court: Objection sustained.

Mr. Hayes: Exception.

I ask now for the proof in the possession of the Attorney
117 General of Mrs. James' American citizenship.

Mr. Stanley: I object for the same reason, and for the further reason that I do not know that there is proof any more than affidavits at most, and they would not be admissible in evidence if I produced them.

Mr. Hayes: I call for those affidavits, or whatever proof you have got.

Mr. Stanley: I object.

The Court: The objection is sustained.

Mr. Hayes: Exception.

The Court: Well, I understand Mr. Stanley also takes the position and makes the objection that it is immaterial and irrelevant.

Mr. Stanley: That is another one of my reasons, yes sir, your Honor.

Mr. Hayes: How can you determine that question until the papers are produced and the Court examines them?

The Court: Because it makes no difference whether she is an American citizen or not, so far as the Alien Property Custodian is concerned.

Mr. Geller: I don't see how it makes any difference in this case whether she is an American citizen or a German.

Mr. Hayes: Does it make any difference with regard to the ownership of the fund?

The Court: That may be. Not as far as this case is concerned.

Mr. Hayes: I ask for evidence, taken by deposition or otherwise, to bring the claim within the provisions of the amendment of June 5th, 1920, Section B-23.

Same objections.

Objections overruling, exception.

118 Mr. Hayes: Now I offer all these papers in evidence. The papers are here and I offer them in evidence.

The Court: They are not produced, consequently they can not be offered in evidence.

Mr. Hayes: But your Honor, there was an agreement that they should be produced here, and that detered me from——

The Court (interrupting): That means that they should be transferred from his office into this Court.

Mr. Hayes: To avoid a subpœna duces tecum. Will your Honor treat it as if they were subpœnaed?

The Court: I sustain the objection to the offer of these papers in evidence.

Mr. Hayes: Well, now, let me ask counsel if the papers are actually here that I have called for.

Mr. Stanley: I don't even have to tell that, under the Court's ruling.

Mr. Hayes: I except, if that is the ruling of the Court.

I offer in evidence all copies of letters addressed and sent by the Attorney General of the Department of Justice to the Alien Property Custodian or the Treasurer of the United States, relating to the said claim filed by Madame James, which are now in court and in the possession of the Attorney General and produced here under a stipulation with him.

(Argument and objections renewed.)

Mr. Geller: I object to this offer, also, as assuming that there are certain letters on file in the Alien Property Custodian's office, of which I know nothing. He cannot assume that there is something and then offer it in evidence. I object to it on that
119 ground also.

The Court: That was the basis of my ruling. He offered these papers in evidence, and there was an objection to the offer, not to the admission of them in evidence, but the offer of them in evidence, and I sustain the objection to the offer of the letters in evidence.

Mr. Geller: I understand that is not a way to prove a case; to make an offer and have the court ruling on them.

The Court: I do not know that the papers are here. I say that if they are here they do not have to be produced.

Mr. Geller: Then I am going to make the general objection now, that I must insist that if he wants to take exception to the exclusion from the evidence of papers he must prove that those papers exist.

Mr. Hayes: We will prove that. I ask that Mr. Stanley be sworn.

Mr. Stanley: I object to being sworn. I am one of the attorneys in this case.

Mr. Hayes: That doesn't make any difference.

The Court: I would not sustain the objection on that ground, but even for this purpose, if Mr. Stanley said that the papers were in court, I would say that he would not have to produce them.

Mr. Hayes: I want to prove by him what papers are in court. I know what papers are in that bundle, some of them.

The Court: Now I rule upon it, rightly or wrongly, if they are here in court they do not have to be produced, and if I can make myself clear about that, as I said before, if you had issued a subpœna duces tecum against the Attorney General the chances are that he would have brought the papers into court because he could
120 not tell that the Court might not rule against him upon his objection to putting them in evidence. But the mere fact that he had them in court would amount to nothing as to the production of the papers, because a man is not obliged to produce a paper to be used in evidence until the paper is specified and called for specifically.

Mr. Hayes: I want to say in reply to that that I did go over yesterday and ask him if I should specify the papers, and he said he would bring them down here. Now, if your Honor please, I am not asking for an inspection of these papers here. They are

here, and I offer them in evidence, and he claims privilege for them. Now I offer still further—you say you want to know if the papers are actually here. I call him as a witness. You decline to have him sworn.

The Court: I didn't say that I wanted to know whether they are here. I say I do not care whether they are here or not. I say that if they are here I will sustain the objection on the ground of privilege.

Mr. Hayes: I except.

"Mr. Stanley: May I put it in this way for the sake of the record that you hold that the situation—I am just proposing this—that you hold that the situation is as if a subpœna duces tecum had been served upon the Attorney-General and he had moved to quash the same and you had sustained the motion.

The Court: Absolutely. And the mere fact that the paper is in Court does not change that situation at all. People frequently—oh, not frequently, but they have brought papers into court and they say "out of respect for the court we have the papers here, but we move to quash the subpœna" and that is done. And this is the same thing."

121 Mr. Hayes: I offer the stipulation signed by Mr. Frederick Geller and myself on November 21st, 1922, in evidence.

Mr. Stanley: I object to that. The Government is not a party to that.

The Court: Well, it may be admitted as against Mr. Geller's client, and excluded as against the Alien Property Custodian and Treasurer.

Plaintiffs' Exhibit XII, October 2nd, 1923, as follows:

122 Supreme Court of the District of Columbia.

PAULINE ANDRE DE LA METTRIE and GEORGE PRATT DE GASQUET JAMES, Plaintiffs,

against

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, as Alien Property Custodian, and Frank White, as Treasurer of the United States, Defendants.

Stipulation.

It is hereby stipulated by and between the attorneys of the parties in the above entitled suit that the following facts be admitted for the purposes of the trial herein, but subject to all objections as to relevancy and materiality, without prejudice to the rights of either party to prove such additional facts as may be material to the issues:

(1) That the plaintiffs were both born of American parents in the United States of America and at present reside in Dinard, France, and have become citizens of the French Republic, the plaintiff, Pauline Andre de la Mettrie, by marriage to Vic Count de la Met-

trie, a French citizen, and the plaintiff, George Pratt de Gasquet James, by transfer of his allegiance to the French Republic during the late World War. Said transfer of Citizenship was made on the 10th day of January, 1916, he having been an American citizen up to that time, and that both the plaintiffs and Vic Count Henri de la Mettrie, the husband of Pauline Andre de la Mettrie, served on the side of the Allies in the French Army throughout the said War.

(2) That the defendant, Elizabeth Pratt de Gasquet James,
123 the mother of the plaintiffs, was born in the State of New York of American parents and was married in the said State to her first husband, Amadee de Gasquet James, the father of the plaintiffs, who died an American citizen in France in the year 1903. That thereafter and on the 15th day of June, 1911, the said Elizabeth Pratt de Gasquet James (sometimes known as Elizabeth Tibbits de Gasquet James) was married to Duc Henry Borwin de Mecklenburg-Schwerin, in Dover, County of Kent, England. That proceedings were subsequently taken by the said Duc Henry Borwin de Mecklenburg-Schwerin to annul said marriage and that a decree of annulment was subsequently granted by the Royal Court of the Duch of Rostock subsequent to the year 1915 and about the year 1916 (the printed copy of the Certificate of Marriage at page 371[a] Record on Appeal in Matter of James in New York Court of Appeals (Exhibit C) may be used in evidence in place of original Certificate; also letter of William Phillips, Assistant Secretary of State, to Charles S. Aronstam, dated April 19, 1919, may be used in evidence.) In the year 1916 the American Embassy at Vienna recognized Madame de Gasquet James as an American citizen and issued her an emergency passport for the purpose of traveling from Littai, which was her residence at the time, to Dresden and return; and that the said defendant, Elizabeth Pratt de Gasquet James (Sometimes known as the Duchess de Mecklenburg-Schwerin), since her marriage to the Duc de Mecklenburg-Schwerin in 1911, resided out of America, and during the entire period of the World War resided in Germany and Austria and now resides in Dinard, France, and has not been in America since 1913, and then only for about one month, when she attended the trial in the Surrogate's Court above referred to.

(3) That in an action brought in the United States Dis-
124 trict Court for the Eastern District of New York by Charles S. Aronstam against the said Elizabeth Pratt de Gasquet James, Francis P. Garvin as Alien Property Custodian, and another, to recover for alleged professional services to the said James, it was adjudged, by a judgment entered therein February 14th, 1921, upon the consent of the said defendant James, and entered in the Clerk's office of said Court on the 16th day of February, 1921, that the said defendant, Elizabeth Pratt de Gasquet James, was an enemy within the meaning of the Trading with the Enemy Act. (Photograph or typewritten copies of the pleadings and judgment in said action may be used on the trial in place of certified copies of the originals.)

(4) That on his death in France on July 28th, 1903, Amadee de Gasquet James left surviving him his widow, the defendant Elizabeth Pratt de Gasquet James; the above named plaintiffs; Victoire Louise

de Libran and Elizabeth Bleeker de Gasquet James, who afterwards married Baron Von der Decken who died in 1907, leaving two infant children surviving her, to wit, Elizabeth Von der Decken and Hereward Von der Decken, whose father, Baron Von der Decken, was an officer in the German Army and died in the late War.

(5) That a final decree and judgment of the Surrogate's Court of Ulster County in the State of New York, a Court having jurisdiction ol the said proceeding, and upon service of citation and due appearance of all the parties thereto, In the Matter of the Judicial Settlement of the Accounts and Proceedings of Elizabeth Pratt de Gasquet James as Ancillary Executrix under the will of Amadee de Gasquet James, deceased, was entered in the Surrogate's office of said Court in said Countd aforesaid on March 21st, 1915, which, among other things, Ordered, Adjudged and Decreed the said Elizabeth
125 Pratt de Gasquet James, after being charged with deficiency of $253,756.98 upon her Account as Executrix as settled therein, and after turning over certain securities and property of the said estate, to pay to Pauline Andre de la Mettrie the sum of $69,754.85, and to George Watson Pratt de Gasquet James the sum of $69,754.85, and the sum of $44,492.43 to Victoire Louise de Libran, and to Hereward Von der Decken and Elizabeth Bleeker Von der Decken, or their Guardian, the sum of $34,877.43 each, as their respective shares of said deficiency. An appeal was taken from the said decree and judgment to the Appellate Division of the Supreme Court of the State of New York which reversed said decree and judgment, but subsequently upon appeal to the Court of Appeals of the State of New York, that Court reversed the Appellate Division and the said decree and judgment of the Surrogate's Court was modified and as so modified was affirmed by the Court of Appeals and thereafter was modified and resettled in accordance with said judgment and direction of the Court of Appeals by the said Surrogate's Court on November 3rd, 1917, and by decree entered in the office of said Surrogate on the said day and as so modified, affirmed and resettled on the date aforesaid fixed and adjudged the amounts payable by the said Elizabeth Pratt de Gasquet James to the respective parties to the said proceedings, as their respective shares of the said deficiency, as follows: Pauline Andre de la Mettrie, $65,133.25; George W. Pratt de Gasquet James, $65,133.25; Victoire Louise de Libran, $41,548.22; Hereward Von der Decken, $32,566.68; Elizabeth Bleeker Von der Decken, $32,566.68, with legal interest upon the said amounts from March 21st, 1915, the date of the entry of the original Judg-
126 ment, and awarding judgment for such reduced amounts to each of them respectively against the said Elizabeth Pratt de Gasquet James accordingly. That the said judgment was duly docketed in the office of the Clerk of the City and County of New York on the 20th day of December, 1919, which was the County in which certain property hereinafter mentioned belonging to the said judgment-debtor, Elizabeth Pratt de Gasquet James, was situated and in the hands or under the control of The Farmers' Loan and Trust Company of the City of New York at the time the said final judgment and decree was made and entered.

(6) That the following property of the defendant, Elizabeth Pratt de Gasquet James in the hands of The Farmers' Loan and Trust Company in the City of New York was seized or sequestered by the then Alien Property Custodian on or about May 20th, 1918, viz.: a life estate or interest in a voluntary trust created by said defendant, Elizabeth Pratt de Gasquet James in the year 1887 out of her own property amounting to about $135,000, with certain remainders over to her children, together with the accumulated income thereon in the hands of the trustee on or about May 29th, 1918, a copy of which Trust Deed which was made to The Farmers' Loan and Trust Company as Trustee is hereto attached and marked "A"; also two Gold Debenture 4% Bonds, due 1959 of the Republica Dominicana of the par value of $500 each dated November 1, 1893, and bearing coupons originally payable March 1st and September 1st in each year beginning March 1st, 1898 and ending March 1, 1903, but changed to be payable April 1st and October 1st, and also $2,887.33 bank balance to the credit of the said defendant, Elizabeth Pratt de Gasquet James, which deposit consisted of income derived from said trust fund. (The notice of seizure of the property by the Custodian served upon The Farmers' Loan and Trust Company to be produced at the trial by defendants.)

127 (7) That since the seizure of the said property said The Farmers' Loan and Trust Company has acted as the agent of the Alien Property Custodian in holding the interest of defendant, Elizabeth Pratt de Gasquet James, in the principal of the said sequestered trust property to the credit of the Custodian, and also for the purpose of collecting the income upon the said fund and of transmitting to the said Custodian, the last payment having been forwarded to the said Custodian on September 16th, 1920, since which time The Farmers' Loan and Trust Company has retained the amounts in its hands as depositary and agent of the Alien Property Custodian.

(8) The amounts remitted by said The Farmers' Loan and Trust Company to the Alien Property Custodian, including said bank balance, amount to $21,622.64 and the amount not remitted to the Alien Property Custodian down to the present time amounts to $16,722.90, and all of these amounts, both those remitted and those retained, including said bank balance, are income from the fund in its hands as Trustee under said deed of trust made by said Elizabeth Pratt de Gasquet James in the year 1887.

(9) That all of the said property so sequestered by the said Alien Property Custodian is still in possession or under the control of either the Treasurer of the United States or of the Alien Property Custodian or The Farmers' Loan and Trust Company, as agent of the Alien Property Custodian.

(10) That executions upon the said judgments in favor of each of the plaintiffs herein were issued out of the Surrogate's Court of Ulster County, New York, under its seal to the Sheriff of the County of New York, directing him to satisfy the judgments hereinabove described in favor of the plaintiffs herein out of the

property of the said Elizabeth Pratt de Gasquet James within
128 the county of New York, and made returnable into the said Surrogate's Court, the first of said executions being dated October 18th, 1920, lodged with the Sheriff on October 22nd, 1920, and continuing with the reissuance of like executions down to the last execution dated February 26th, 1921, and lodged with the Sheriff March 4th, 1921, all of which executions were served upon The Farmers' Loan and Trust Company by the Sheriff and were returned by the Sheriff unsatisfied.

(11) That executions upon the said judgment in favor of each of the plaintiffs herein were issued out of the Surrogate's Court of Ulster County, New York, under its seal to the Sheriff of Ulster County, New York, on the 17th day of November, 1921, and were duly returned by the said Sheriff Nulla Bona on the 2nd day of December, 1921.

(12) The Farmers' Loan and Trust Company was appointed the general guardian of the estate of the said minors until they arrive at the age of fourteen years, by order of the Ulster County Surrogate's Court dated July 10th, 1913, and duly entered in the Clerk's office of said Court and continues to act as such guardian.

(13) That the defendant, Elizabeth Pratt de Gasquet James, filed her claim with the then Alien Property Custodian for the reclamation of the said sequestered property on December 24th, 1920.

(14) Parson's Edition 1918 of the Code of Civil Procedure, State of New York, or Parker's Criminal Code and Penal Law Ed. 1913, or Chase's Pocket Edition, or any other editions of said Codes may be used for proving any sections of the said Codes that may be material to the action.

(Signed) J. NOBLE HAYES,
Plaintiffs' Atty.

November 21, 1922.

(Signed) FREDERICK GELLER,
Attorney for Defendant
Elizabeth Pratt de Gasquet James.

129 "A."

This indenture, made this fourteenth day of October, in the year one thousand eight hundred and eighty-seven between Elizabeth T. Pratt James, of the Town of Esopus, Ulster County and State of New York, of the first part, and The Farmers' Loan and Trust Company, a Corporation of this State, located in the City of New York, party of the second part, witnesseth:

"Whereas, the party of the first part is the owner and holder of certain bonds and securities hereinafter described and is desirous of creating by Indenture and Declaration of Trust a Trust Fund in the hands of the party of the second part, for the use, behoof, benefit and enjoyment of the person or persons and in the manner and form as hereinafter stated;

"Therefore, this indenture witnesseth: That the said party of the first part, in consideraton of the premises and of the sum of one

dollar to her in hand paid by the said party of the second part, and in consideration of the acceptance by the party of the second part of the Trust hereby created and its undertaking and agreement to execute the same as hereinafter set forth, has bargained, sold, aliened, transferred and set over unto the party of the second part all and singular the following described bonds, securities and properties in number and account as follows:

"OOne hundred (100) Bonds of One thousand Dollars each of the New York Central R. R. Co., due in 1887, 6 per cent interest. Coupons due June 15th and December 15th.

"Twenty-five (25) Bonds of One thousand dollars each, 1st Mortgage of the Keokuk and Des Moines Railway Co., 5 per cent interest. Coupons due April 1st and October 1st.

"Fifteen (15) Bonds of One thousand Dollars each, of
130 Chicago, Milwaukee and St. Paul R. R. Co., 1st Mortgage of the Southwestern Division, 6 per cent interest. Coupons due January 1st and July 1st.

"Five (5) Bonds of One thousand dollars each, of the Chicago, Milwaukee and St. Paul R. R. Co., 1st Mortgage on the 'Hastings and Dakata' Division, 7 per cent interest, Coupons January 1st and July 1st.

"Six (6) Bonds of One thousand Dollars each, of the Cedar Falls and Minn R. R. Co., 1st Mortgage 7 per cent Coupons January 1st and July 1st.

"In trust, however, to collect the interest, income and revenue thereof when the same shall become due and payable, and to pay over the same from time to time at the end of each and every quarter year unto the said party of the first part for and during the term of her natural life, and at her death in the event of her leaving issue, to divide the principal of said Trust Fund into as many equal shares or parts as shall equal in number the number of her children, who at the time of her decease shall be living, or shall then have died leaving issue then living, and to pay over the interest, income and revenues of one of such equal shares to each of her children, Elizabeth Bleecker, Victoire Louise, George Watson and Pauline Andre, if living at the time of her decease, for and during his or her natural life, and at his or her death to pay over the principal of such equal share to the person or persons who shall then be his or her heir or heirs-at-law, and to pay over the principal of one of such equal shares to the issue of each of her said four children, if any, who shall have then died leaving issue then living; and to pay all the others of such equal shares and the whole residue and remainder of said trust funds and property, both principal and interest,
to such person or persons as the party of the first
131 part shall designate by her Last Will and Testament; and in default of such designation, then in equal shares to the other children of the party of the first part, if any, hereafter born, who shall be living at the time of her decease, and the issue of such, if any, as shall have then died leaving issue then living; such issue in each and every case, if more than one, to take collectively as tenants in common one such share of said Trust Fund in equal shares if they

stand in equal degrees of consanguinity to their deceased ancestor, and per stirpes if they stand in unequal degrees of consanguinity.

"In case the party of the first part shall die without issue her surviving, then the whole principal of said Trust Fund, with all accumulations of interest, shall be at once paid over by the party of the second part to such person or persons as the party of the first part shall designate by her Last Will and Testament, and in default of such designation then to her heirs-at-law.

"The party of the second part is hereby authorized and empowered at any time or times to change any of said investments with the consent of the party of the first part, and is required and bound so to do whenever thereunto requested in writing by party of the first part, and to reinvest the trust fund, or any part thereof, in such other securities as the party of the first part may deem wise and advantageous to the purposes of this trust, but without responsibility to the party of the second part for any losses that may arise from said action.

"And it is further provided and agreed that upon the maturity or payment of the principal of any of the securities in which said Fund, or any part thereof, is or shall be invested, the investment thereof shall not be limited to the ordinary investments which trustees are authorized to make, but that such Funds, if the
132 party of the first part shall so direct, shall be invested in the first mortgage bonds of some incorporated Railroad Company, or such other corporate or municipal bonds, or such other securities of any kind as the party of the first part shall in writing direct, but without responsibility to the party of the second part for any losses resulting from such investment.

"The said party of the second part shall be entitled to receive in consideration of the faithful performance of the foregoing and its services therein one per cent on each dollar of interest, income and revenue which comes into its hands or possession, and shall be paid over by it to said cestuis que trust.

"And this indenture further witnesseth: That the party of the second party hath accepted and doth hereby accept the trust created and in it reposed by these presents, and hereby, for itself, its successors and assigns, in consideration of the premises and of the sum of one dollar to it in hand paid by the party of the first part, the receipt whereof is hereby acknowledged, covenants and agrees to and with the said party of the first part, her heirs, executors, administrators and assigns, and to and with the several beneficiaries of said trust above provided for, that it, the said party of the second part, will honestly, faithfully and diligently fulfill and execute the same according to the directions of this instrument.

"And it is further agreed that this Indenture be, and the same is hereby executed in duplicate, each party to retain one of said duplicates, and either thereof to be read in evidence with equal force and effect.

"In witness whereof, the party of the first part to these duplicate presents hath subscribed her name and affixed her seal, and the party of the second part, by its President duly authorized, hath subscribed

its name and affixed its corporate seal in execution thereof,
133 the day and year first above written.

THE FARMERS' LOAN AND TRUST COMPANY,

(Signed) By R. G. ROLSTON, [SEAL.]
President.

Attest:

(Signed) WM. H. LEUPP, *Secy.*
(Signed) ELIZABETH T. PRATT JAMES. [SEAL.]

Mr. Hayes read paragraph fourteen of foregoing stipulation.

Mr. Stanley: Of course, your Honor, I have no objection to any law of any state in a recognized edition being put into evidence.

The Court: We take judicial notice of the laws of the states of this country here, and the mere calling attention to them is not——

Mr. Hayes: The section is brief. Shall we read it in? I offer in evidence Section 1171 of the Criminal Code of the State of New York, the Banks Law Publishing Company edition.

(Reading:)

"Section 1171. Fraudulent Removal of Property to Prevent Levy.—A person who with intent to defraud a creditor or to prevent any of his property from being made liable for the payment of any of his debts, or levied upon by an execution or warrant of attachment, removes any of his property or secretes, assigns, conveys, or otherwise disposes of the same; or with intent to defraud a creditor, removes, secretes, assigns, conveys or otherwise disposes of any of his books of account, accounts, vouchers, or writings in any way relating to his business affairs, or destroys, obliterates, alters or erases any of
134 such books of account, accounts, vouchers or writings, or any entry, memorandum or minute therein contained, is guilty of a misdemeanor."

Objected to by both defendants as immaterial and irrelevant.
Objection sustained.
Exception.

Mr. Hayes: You understand that I offer this for the purpose of showing, in connection with other evidence to be offered, that this is an attempt on the part of the defendant to remove this property from the reach of her creditors in the state of New York.

I offer also Section 1172 of the same Code, as follows (reading):

"Section 1172. Knowingly Receiving Property Removed to Defraud Creditors.—A person who receives any property from another knowing that the same is transferred or delivered to him in violation of, or with intent to violate, the last section, is guilty of a misdemeanor."

Same objections and same ruling.
Exception.

I offer in evidence Sections 2554, 2553 and 2458 of the Code of Civil Procedure of the State of New York.

Same objections, same ruling.
Exception.

I offer section relating to a special proceeding under the Code of Civil Procedure. That was in effect at the time that this property was attached. Sections 2432, 2435, 2437 and 2441.

Same objections, same ruling.
Exception.

Objected to by both defendants as immaterial and irrelevant.
Objection sustained.
Exception.

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Same objections, same ruling.
Exception.

I offer section relating to a special proceeding under the Code of Civil Procedure. That was in effect at the time that this property was attached. Sections 2432, 2435, 2437 and 2441.

Same objections, same ruling.
Exception.

135 Mr. Hayes: I am understood to except to the rulings in all these matters.
The Court: Yes.
Well, you don't need to offer it. As I say, we take judicial notice of those things. I think, though, that they should be called to the Court's attention, because I do not propose to read the Code of Civil Procedure myself.

PLAINTIFFS' EXHIBIT XIII FOR IDENTIFICATION.

The offer of a certified copy of following Judgment in evidence, objected to by the defendant Custodian and Treasurer, objection

sustained, marked Plaintiffs' Exhibit 13 for identification. October 2nd, 1923.

Exception.

The Exhibit is as follows:

"At a Stated Term of the District Court of the United States for the Eastern District of New York held at the Court House, in the Post Office Building, in the Borough of Brooklyn, City of New York, on the 15th day of February, 1921.

Present: The Honorable Edwin L. Garvin, District Judge.

Equity. No. 658.

CHARLES S. ARONSTAM, Plaintiff,

against

ELIZABETH PRATT DE GASQUET JAMES, FRANCIS P. GARVAN, as Alien Property Custodian, and John Burke, as Treasurer of the United States, Defendants.

This cause, which by the Order of November 5th, 1920, was restored to and placed upon the Equity Calendar of this Court for trial as to the issues raised by the Answers of Francis P. Garvan, as Alien Property Custodian, and John Burke, as Treasurer of
136 the United States, coming on now again to be heard this December 1st, 1920, on said Order, on the papers formerly filed and read herein and on the evidence offered by both the plaintiff, Charles S. Aronstam, and the defendant, Francis P. Garvan, as Alien Property Custodian, and John Burke, as Treasurer of the United States, to maintain the issues raised and joined, and was argued by counsel.

Upon consideration whereof, it appearing to the Court that the plaintiff is not an enemy or an ally of an enemy, that he has regularly filed a notice of the claim under Section 9 of the Act entitled "An Act to Define, Regulate and Punish Trading with the Enemy and for Other Purposes," as amended; and that all of the jurisdictional facts necessary to establish the jurisdiction of this Court have been sufficiently proven, and that the said plaintiff is entitled to the relief prayed for in his bill, and that John Burke, as Treasurer of the United States holds as the property of the defendant Elizabeth Pratt de Gasquet James, who is adjudged to be an enemy within the meaning of the said Trading with the Enemy Act, a sum of money aggregating the sum of $16,178.13 demanded and received by said Alien Property Custodian as enemy owned property, and that said money or property is liable to payment of the judgment heretofore confessed by the said Elizabeth Pratt de Gasquet James on July 6th, 1920, in favor of the plaintiff for the sum of $5,000.00.

It is therefore, adjudged, ordered and decreed that John Burke, as Treasurer of the United States, do, out of said money and property so held by him as the property of said defendant James, pay to

Charles S. Aronstam, the plaintiff, in satisfaction of the said judgment so confessed, the sum of $5,000.00 with interest thereon from July 6th, 1920, until paid, and it is further adjudged, ordered
137 and decreed that the plaintiff do pay the costs of the suit to be taxed by the Clerk of this Court.

EDWIN L. GARVAN,
U. S. D. J.

Approved as to form.

LEROY W. ROSS,
U. S. Attorney Eastern District of New York.
FREDERICK GELLER,
Atty. for Defendant Elizabeth Pratt de Gasquet James.

EASTERN DISTRICT OF NEW YORK, *ss:*

I, Percy C. B. Gilkes, Clerk of the District Court of the United States for the Eastern District of New York, do hereby certify that the foregoing is a true copy of an original Decree on file and remaining of record in my office.

In testimony whereof, I have caused the Seal of said Court to be hereunto affixed at the Borough of Brooklyn, in the Eastern District of New York, this 24th day of November, in the year of our Lord one thousand nine hundred and twenty-two and of the Independence of the United States the one hundred and forty-seventh.

(Signed) PERCY G. B. GILKES,
Clerk.

(Signed) By J. G. COCHRAN,
Deputy Clerk.

Mr. Geller: The amount remitted to the Alien Property Custodian was $21,622.64.

That is the amount remitted. On September 18th, when I last inquired, the Farmers' Loan and Trust Company, as custodian for the Alien Property Custodian, had in its possession in New
138 York $22,514.01. That is in addition to the amount that has been remitted.

Mr. Hayes: It is stipulated, is it, that that is the amount in the hands of the Custodian?

Mr. Stanley: Well I don't know, your Honor, just what the exact amount is. But I will find out. Whatever we have got is there. I don't remember.

Mr. Hayes: It is a part of my case to offer to prove it.

The Court: I don't think there will be any trouble about that. If there is I will open the case to find out.

Mr. Hayes: I want to know from Mr. Stanley whether he knows if any portion of that sequestered fund either in the hands of The Farmers' Loan & Trust Company or in the hands of the Treasurer has been paid over to Madame James?

Mr. Stanley: As far as I know it never has. There has never been anything paid to her as far as I know.

Mr. Geller: I ought to have stated that out of the money remitted to the Alien Property Custodian Mr. Aronstam's claim is paid. I don't know how much it was, but whatever it was, it was paid out of that money.

Mr. Hayes: Well, you consented to it. You ought to know how much it was.

Mr. Geller: I cannot give the exact amount.

Mr. Stanley: Oh, I forgot I had this. Here is a statement as of October 13, 1921, which will include the corpus, and there may be some income.

The Court: Well, that can be allowed to stand, and I have no doubt that all the information necessary to go into a judgment will be furnished by the Alien Property Custodian.

Mr. Hayes: I offer in evidence Madame James' Account
139 which she filed in the Surrogate's Court of New York April 17, 1913, upon which in 1915 a judgment was rendered to the effect that she was short in that account $253,000. The materialtiy of it will appear when your Honor reads the deposition of M. Le Paulle that was taken last Tuesday, in which he says, so far as his view of the law is concerned, that if claims arose before 1914—the date which he gives, which I have not in mind for the moment—that they could be allowed against the French Custodian, and that in determining the question as to when a claim arose upon a judgment that the court will go back and determine when the claim itself was due, and not when the judgment upon it was rendered. Now I have understood from Mr. Geller that anything that I offer from the printed record here would not be objected to on the ground of being incompetent, that is, not being properly proven. Have you any objection to it on that ground?

Mr. Geller: No.

Objection by Custodian and Treasurer.

Mr. Hayes: Your Honor will see, when you read the deposition of Le Paulle——

The Court (interposing): Well, I haven't read it yet, and it may never be read.

Mr. Hayes: Well, that is the dilemma that I have been put in by this method.

The Court: I say it may never be read, Mr. Hayes.

Mr. Hayes: I know that it may never be read, but I ask to have this admitted now, and if it is not read, then it can be stricken out afterwards.

The Court: No, that is not a very orderly procedure, I think. I would rather wait until the time comes, and then admit it if it is proper to be admitted. But I sustain the objection for the
140 present.

Mr. Hayes: What is the ground of the objection? To make the offer clear my associate sugests I offer this as showing what the judgment is for and when the claim matured.

Mr. Stanley: I object to it for the same reason as before, if the Court please.

The Court: I will sustain the objection. The claim is on a judgment, and I understand that the judgment has been proved. Now that is all there is for the present.

Excluded under general exception, and marked Plaintiffs' *Exhibit 14 for Identification,* and is as follows:

Exhibit consisting of four printed pages of Madame James' account filed in the Surrogate's Court of New York, April 17, 1913, contained in the record on appeal in the Matter of James, New York Court of Appeals:

"To the Surrogate's Court of Ulster County:

I, Countess Elizabeth Pratt de Gasquet James of Dinard in the Department of Ille-et-Vilaine, in the Republic of France, do render the following account of my proceedings as executrix of the Last Will and Testament of Count Amadee de Gasque James, deceased.

Ancillary Letters testamentary were issued to me on the 22nd day of March, 1904, and I thereupon entered upon the discharge of my duties as such executrix. This account covers and includes only the American estate of the decedent which has come into my hands under such Ancillary Letters Testamentary."

Then follows descriptions of the matter contained in Schedules A to H inclusive. The executrix charging herself as follows:

"I charge myself as follows:

141	Principle of said Estate.....	$1,524,880.54
	I credit myself with.....	1,503,240.15
	Leaving a deficiency of.....	$21,640.39

subject to commissions and expenses of accounting.

* * * * * * *

Dated April 17, 1913."

Trial resumed November 7, 1923.

At the suggestion of the Court depositions of Pierre Le Paulle on behalf of the defendants and Rene Pellerin on behalf of the plaintiffs, were handed up to the Court to be read by it and rulings to be noted by it to the admission and exclusion of evidence.

Mr. Neal (of counsel for the defendant James): If your Honor please with respect to the submission of depositions, in view of our contention which has several times been presented to your Honor, we want further to object to the depositions, upon the ground that they are irrelevant and immaterial, for the reason that there is no proof in the case at present that this particular claim has anything to do with the fund now in the possession of the Receiver. We want

to preserve our theory of the case by making a formal motion at this time.

(Case adjourned to December 1st, 1923. Briefs to be submitted and argument heard at that time.)

Deposition of Pierre Le Paulle.

Taken at Post Office Building, City of New York, September 22nd, 1923; marked in evidence Defendants' Exhibit I.

142 It is hereby stipulated and agreed by and between counsel for the plaintiffs, and counsel for the defendants Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, that all objections to materiality, relevancy and competency of questions made in this regard, may be argued and disposed of at the hearing in chief of this cause.

Pierre Le Paulle, called as a witness in behalf of the defendants Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, having been duly sworn, testified as follows:

Direct examination by Mr. Stanley:

My name is Pierre Le Paulle. I reside in Paris, France. I am a citizen of France.

I am a Barrister of the Court of Appeals of Paris. I am L. L. B., L. L. M., L. L. D., of the Law School of Paris, and at present am lecturing at that Law School, and I was this year a member of the jury for the L. L. D. degree. These abbreviations L. L. B., L. L. M. and L. L. D., stand respectively for Bachelor of Laws, Master of Laws and Doctor of Laws.

The degree L. L. D. is the highest degree that is given by the Law School of Paris.

It is a degree given after five years of work in the Law School, plus the writing of a thesis. The highest court of France is what is called the Court of Cassation. I am not entitled to practice before the Court of Cassation. The lawyers in Paris in the Court of Cassation are a special body of lawyers; they are not allowed to practice before the ordinary courts, they buy their office, they do their whole career in that court—they constitute not a higher body, but a different body.

Yes, I have practiced law in France as a practitioner.

143 I am also Bachelor of Arts, B. A., of Paris; and I am also S. J. D. of Harvard Law School, where I have spent three years, and where I am going to deliver some lectures this coming Fall.

Yes I did take my work for the degree, Doctor of Jurisprudence, at Harvard Law School after I graduated from the Law School of Paris.

I have written articles or books upon French law.

I have written an article, last year, in the Harvard Law Review—an article two years ago, in the Revue Internationale de l'enseignement; an article last Spring in the Bulletin of the French Society of Comparative Legislation, and I have just written a book on Foreign Corporations, which was out a month and a half ago. I mean foreign corporations in the United States. That was a book of information on American Law for the use of French lawyers.

I was one of the two French representatives this year at the American Bar Association Convention in Minneapolis. I was also French Delegate to the Canadian Bar Association, at Montreal, Canada.

I am going to deliver a series of lectures at Harvard University this Fall. Upon Civil Law compared with Common Law. I mean French law.

Yes, in preparation for my testimony here, I have examined into the law and authority of France relative to the administration of enemy property held by the French Government, and into questions involving the payment of claims against former German property, or enemy property, held by the French Government.

Q. Assuming that under the law of the United States, or one of the States, a judgment for a sum of money constitutes a mere debt against the judgment debtor, and assuming there a mere
144 citizen of the United States secured such a judgment in a court of the United States or one of the States, against a person who, under the laws of France, was an enemy, could the American judgment creditor, of the enemy, make application to the French Government, or an official thereof, holding property of the said enemy, acquired by reason of seizure, on account of its enemy character, and secure the payment out of that property of the amount of the judgment debt.

Mr. Hayes: I object to the question as irrelevant, incompetent and as not being parallel to the facts in the present case.

A. The general principle is that the German debtor must be sued, where he has his domicile. So that the mere fact that he has property in France will not allow any creditor, even a French creditor, to sue the French Government in order to have their debt paid out of that property. This general principle is written in Article 296 of the Treaty of Versailles, and I think the subdivision is No. 1; and the Law of March 10th, 1920, which has been made to apply to Articles 296 of the Treaty of Versailles.

Yes, I mean passed by the French Government to settle the details of administration of Article 296.

By Mr. Hayes:

Q. The law construing Section 296? A. Not only construing, but settling details and different things coming up under Article 296. Now the case that you put here does not fall, of course, under Article 296, but under Article 297 of the Peace Treaty. If your German is domiciled in Germany, well, that is the end of it; even if he

has property sequestered in France, generally speaking, the creditors have no right whatever to sue the French Government, and the French Government will not admit a claim, but refer it to his domicile, the German domicile. The fact that he has property
145 sequestrated in France is not sufficient to induce the French Government to pay money to the creditors out of the property. This is the basic principle that has got to be cleared up first. This is under the 296 of the Treaty of Versailles, this is settled not by private suits, but by this clearing house in France. You have not any such clearing house in this country; in France and Germany debts between German and French citizens are settled by the German and French clearing houses, and these debts coming under 296 are something wholly different from the kind of question that occupies us now. We want at first to see the clear-cut difference between Article 296 and Article 297; many errors have been committed even by French lawyers and jurists by a confusion between 296 and 297. You have got to clear that out at the first. Where the French creditor's domicile is in France, and the German creditor is domiciled in Germany—I mean the German debtor is domiciled in Germany. As a question of principle, as a general rule, the debt has got to be collected through the French clearing house in Germany, and the fact that there is German property belonging to him in the hands of the French Alien Property Custodian will not allow the French creditor to sue the Alien Property Custodian to recover money out of it.

Q. He has got to get judgment first against the debtor in Germany? —. No, even a Judge would not help him out. By the way, he will not get the judgment himself, the clearing house gets it for him. The Treaty of Versailles has eliminated individual relations between the creditor and debtor. We are here under 296. The general scheme of 296 is that when the German debtor is domiciled in Germany, after January 19, 1920, (the date when the Treaty of Versailles came into force) the creditor has no right as a
146 general rule, to sue, to go after the property which is in France. His only right is to go to the clearing house in France, give data, proofs, evidence of his debt, and the French clearing house will collect the debt and the money will be given back, not to the creditor, but to the French clearing house. When a certain amount of debts are collected, a certain percentage of the money is given to all French creditors; and not only to the French creditors, but to the Italian, Greek and English creditors, residing in France, because we have treaties made with those three powers, but not with America. This question of sequestered property is entirely out.— This is the field of 296. Now 297 faces quite a different situation. It speaks about the sepuestrated property. Now the question which occupies us here now comes only, when this German has some property in France, and the question is how far this property, situated in France, may be responsible, for the debts that this German has contracted before. Now, as far as this question is concerned, there has been much discussion about this, and I would state the law to

be this: Before the law of October 7th, 1919.—The law of October 7th, 1919, is the fundamental French law on this question of sequestration, the starting point of all the French law on the question of sequestration. Before the time, there was, of course, under no circumstances whatever any possibility for anybody to sue the French Government and get his debt paid by the French Government out of sequestrated property, because as long as the Peace Treaty did not come into force, the sequestration proceedings were only considered as temporary proceedings. The French Government took hold of the property, but did not intend to do anything definitive about it.

So he was only a depositor of this property. Yes, the Custo-
147 dian was only a depositor. I insist on this point, because I understand that in the United States and England it is not the same. I understand that under the American law you have disposed of some property before the treaty. As long as we did not know what the Peace Treaty would decide, we have considered ourselves only as the depositors of the enemy property, which was situated in our country. So before this law of October 7th, 1919, which authorized the liquidation of this property, that there was no way for a creditor to sue the French Government. Now, of course, even after the date, before the coming into force of the Treaty of Versailles, that is to say on January 19th, 1920, there was never any way for the creditor to sue the French Government because the Treaty of Versailles did not come yet into force, and the French law made in accordance with this Treaty, of course, had not yet come into force, so from the time where the property was sequestrated by the French Government, that is to say, September 27th, 1914, up to January 19th, 1920, the Alien Property Custodian could not be sued. (September 27, 1914, is the date of the decree of the French President of the Republic giving orders that the enemy property be suquestrated in France.)

Now from September 27th, 1914, therefore, up to January 10th, 1920, the French Government could not be sued under any circumstances whatever by any creditors of the German citizens whose property had been sequestrated.

That was the date the law was passed, when it came in with the Peace Treaty. No it does not mean that before January 10th, 1920, the creditors of the German debtor could take no proceedings whatever against the property, because as I have stated before, the French

Government was considered only as a depositor, as being
148 custodian of the thing, but having no other right as a depositary than those given by the regular rules of Article 1961, and following, of the French Civil Code.

Yes, that is the general section reading depositaries. As a general rule the fact that the debtor property is in the hands of a depositary is no objection for the creditor to attach the property; so that proceedings of attachment by creditors of the German citizen having property in France was perfectly good proceeding before the law of October 7th, 1919. At that time it became clear that the French Government was no more a depositary, that it was going to hold the property as it saw fit.

By Mr. Stanley:

I mean between September 14th and October 7th, 1919—the Treaty of Versailles—that Treaty give to it power of complete disposition of the property which has been sequestrated with it as depositary. So after that, it was to the French legislators to tell what they were going to do. They passed the law of October 7th, 1919, and by that law they say "We are going to take this property and sell it out and hold the money." So as soon as this law was passed, as soon as it was clear officially that the property would be sold for the benefit of the French Government, of course, the French Government became something more than a depositor and became really the true owner of it.

The rights of creditors of Germans with respect to that property during that period, between September 1914, and the coming into effect of the law of October 7th, 1919, were they could not sue the French Government. The French Government was in no way the representative of the German debtor. They could not sue the German debtor in France, because the man debtor was not there, was not domiciled there.

149 What could they do to get their debts paid out of that property, if anything? Well, if they were in such a case where an attachment of the property is allowed—for instance when this property was pledged to them, of where they had made a special repair on a house of a German, situated in France, raising the value of the house, so that they had a kind of lien on the house—in any case where they could attach the property according to the general rules of civil law, the French Government could not stop the creditor from attaching this property. This point has been in controversy for rather a long time, but it was finally admitted that they could do it.

Yes, you understand me to say then, that between September 1914 and the coming into effect of the law of October 7th, 1919, if a creditor of a German debtor, whose property had been seized by the French Government, could, under French law, attach the property, he could secure the payment of his debt. He could, yes, but of course the general rule remains that (the property, not being property situated at the German's domicile) the creditor must sue the German debtor in Germany.—Generally speaking, when you are a creditor under the French law the only place where you can sue the debtor is where he is dimiciled, but under exceptional cases you can *suing* him first, go after the property. But these cases are very rare. Most of them are cases where you have increased the property.

Q. So one of the cases where this attachment could be made comes where the debt arose by reason of a transaction foreign to the property? A. No, no.

Mr. Hayes: I object to that question, it is too indefinite, I cannot understand it.

A. (Continuing:) Taking the question as it is put, that
150 is to say, after the general date of January 10th, 1920, the situation is this: The property is in the hands of the French

Alien Property Custodian, he is no more a simple depositary. The Germans have recognized that the title to the property belonging to Germans in France was vested in the French Government, the said property is to be sold by proceedings of "liquidation," and the money is at the entire disposition of the French Government. Now the question came up right away what are the creditors who can be paid out of that money? First of all, generally speaking, as I say, creditors have got to go where the debtor is domiciled, and all this is settled by the Articles 296 of the Peace Treaty, which leaves the actual question blank.—But the decree of October 23rd, 1919, in its Article 8, says: (The witness giving a rough translation) "The Alien Property Custodian pays out of his fund the sums of money which are necessary to settle the passive, and the expenses of the liquidation."

What do I mean by "passive"? The question came up right away under this decree of October 23rd, 1919. The question of what is meant by "passive." That means there are some people who are creditors, who can get some money out of the French Alien Property Custodian. Therefore, the question is who are these creditors. Well, this is the only official text that we have—the only word which is said about creditors anywhere in the French official texts having force of law.

By Mr. Hayes:

Q. The final word? A. The only official word we can find in the French law, the decree speaking about creditors which can get something out of the property in the hands of the Alien Property Custodian. So the question arose then. Under this decree a circulaire (an official letter of instruction issued by one of the members
151 of the Government, by the Secretaries of Justice, of November 3rd, 1919, says (the witness giving a rough translation): "In the operations of liquidation we must take into account three interests which are at stake: First, National interest—considered as the value of a pledge and the way to utilize it for the general benefit of the country, and the individual needs. Second: The interest of third parties when it has its cause in an act of clear validity affecting the sequestrated property. Third: The interest of the former owners of the property sequestrated. This circular is drafted in terms which are about as vague, as the circular of November 3, 1919, because the question remains entire: which are the third parties, whose interests are going to be considered by the French Alien Property Custodian. In a judgment of the Tribunal of Nice, of the 3rd of March, 1920, reported in the French legal paper called "La Gazette du Palaid," of April 26th, 1920—

"It is of course clear that the rights of creditors remains, but they are transferred from the property to the products of the liquidation, and insure to these creditors a useful vocation." So these three branches of the French Government—legislative, executive, judicial—recognize that these are some rights for some creditors to be paid by the Alien Property Custodian out of the property in the

hands of the French Government. And of course the questions remain entire, who are these creditors and what rights have they? Well, this was settled in the fundamental circular issued by the Minister of Justice and sent to the Prosecuting Attorneys of all the French tribunals, dated June 24th, 1920. This is really, in the actual matter, the fundamental text that we have. I have said before, that the only official text which we have was a decree, because
152 these circular notes have not any absolute official value as decree rendered by the President of the Republic would have. This text is this: "We must lay as the principle that the creditors of a German citizen ought to get him where he is domiciled. But there are two cases in which the general principle which we have laid down, cannot be applied simply and strictly. First, in the cases where the sequestrated property constituted the whole (here the witness said the word he wanted was not found in the English language)—belonging to the Germans who had, prior to the war, in France, their principal establishment. These German subjects have in general left the territory of the Republic at the beginning or before the outbreak of the war. They had resided outside of France, and it is to that place, to their new domicile, that strictly speaking the creditors should be sent back; but it is nevertheless true that we consider here only the settlement of debts prior to the war. That is to say the situation of creditors who at the time that they contracted with their debtor were thinking, had the right to think, that the elements of the assets situated in France, was a good and valid general pledge for the debts which were contracted for by them. Now this is for the benefit of these creditors, French, allied or neutral, that the text relating to sequestration has foreseen the possibilities of a settlement." This is something absolutely fundamental. That is, that the only creditors, prior to the war of 1914, can get paid out of that property. If the date at which the debt had been contracted is a date later than the 2nd of August, 1914, there can be no way whatever for the creditor to recover the amount of the debt out of the Alien Property Custodian in France. The latter only considers the debts prior to the date of August 2nd, 1914, and among the debts posterior to the date, he considers only three
153 kinds of debts: First, when the German debtors having their principal establishment in France on or before August 2nd, 1914, as is stated by the circular I have referred to of June 24th, 1920—the second: When the debt has been treated with a mortgage and lien on the property which has been sequestrated, (always, of course, when this mortgage or this lien has been established, prior to August 2nd, 1914). This second case also is clearly referred to in the circular order of June 24th, 1920, which says (the witness translating roughly): "The second case in which the general principle, by which we refuse to admit foreign creditors, is overthrown, is the case when the sequestration applies to property which is subject to some mortgage, pledge lien or special charges."

Anything else? Yes, in the text: "Mortgages, liens and pledges" are given only as examples of special securities. This enumeration is not exclusive.

Q. The general principle is it applies to this, and it says such and such as examples? A. Yes, those that are enumerated.

By Mr. Stanley:

Q. Am I correct in stating, in summarizing what you say, as follows: Generally speaking, even after the decree of October 7th, 1919, which became effective January 20th, 1920, the date when the Treaty of Versailles came into effect, only creditors of Germans whose properties have been seized and the debt of which creditors arose prior to August 2nd, 1914, could apply to the French Government or the French Alien Property Custodian to have the amounts of their debts paid out of the proceeds of the sequestrated property? A. Yes.

Any type of creditor of the German, whose debt arose prior to August 2nd, 1914, making such application to have the debt paid has got to come within one of the three cases I have announced,
154 out of which I have just explained two.

Q. No matter whether the debt constituted a special charge or lien or mortgage upon the particular property? A. This case referred to is one of the three cases I was enumerating in which creditors prior to 1914 can sue.

Q. You said a moment ago that any creditor whose debt arose prior to August 2nd, 1914, could sue, did you not? A. No, sir. No creditor whose debt has arisen after August 1914, can sue the French Alien Property Custodian to have his debt paid out of the sequestrated property, no matter how it arose. If it is after August 2nd, 1914, that is the end of it.

Mr. Stanley: Then I was mistaken in saying——
Mr. Hayes: What is the qualification.

A. (Continuing:) Among those prior to August 2nd, 1914, the general rule is that of course they have got to go——
Mr. Hayes: You said "posterior" here.
The Witness: Probably I did not mean that.

Q. Let me summarize it again: Do you mean this—that no creditor of a German whose property has been sequestrated by the French Government, could apply to the Alien Property Custodian of France, or the French Government, for the payment of his debt out of property of the German, sequestrated, if that debt arose after August 2nd, 1914? A. Yes——

Q. (Interrupting:) Let me continue: If the debt of such a creditor arose prior to August 2nd, 1914, he could apply to the French Alien Property Custodian or to the French Government, to have his debt paid out of the sequestrated property of his debtor, provided his debt constituted a special charge against the property, or provided the debt was against the general establishment of a German in France.

155 Mr. Hayes: I object to your leading the witness, the witness qualified that.

Mr. Stanley: Let him state what he means.
Mr. Hayes: He elaborated the qualifications.
Mr. Stanley: Let him put it this way.
The Witness: I have stated that with three exceptions—I have only stated two exceptions, now——

Q. Provided it came under the second exception which you have elaborated above, or provided it constituted a third exception which you will presently elaborate—is that right? A. Yes.
Q. Then you misstated the fact before, when you indicated that debts arising posterior to August 2nd, 1914, could be collected out of this property? A. Yes, I did. I have probably said "posterior" while I meant "anterior".
Q. Now, you can continue on your third exception as to debts arising out of the property prior to August 2nd, 1914? A. The two first exceptions that I have stated are written in this circular of June 24th, 1920, to which I have referred. The third one is not referred to in any French text, statute, decree or circular of any kind.

Mr. Hayes: I object to testimony in regard to the French circular, decrees, etc., unless translations are to be put into the record. I move to strike out the testimony with reference to them, unless they are introduced.

Q. You may go ahead with your answer. A. This third exception has been worked out on the pure basis of equity, by the administrative practice of the French Alien Property Custodian.

Mr. Hayes: The third exception to what?
The Witness: The third exception is an exception to the
156 principle that creditors prior to August 2nd, 1914, must sue the debtor where he is domiciled after January 10th, 1920.
Q. Go ahead. A. This third exception has been worked on an equity basis by the administrative practice of the French Alien Property Custodian, and I have obtained that information from the officials of that Bureau in Paris. They will pay creditors prior to August 2nd, 1914, when the debt arose out of some work connected with the property situated in France. Suppose, for instance, a German having a chateau somewhere in France, and this German employed a gardner, this gardner has worked his garden for one year. His wages have not been paid. He has no lien on the property, and he has no mortgage of any sort. The German has not his principal establishment in France, so he could not sue the French Alien Property Custodian under the first or second ecceptions. It is in the nature of an equitable lien which has been worked out, in working out the French idea of liquidation.
I take the word "equity" here in a general sense—as being decent and fair to creditors.

Mr. Hayes: That is all our equity is.

A. (Continuing:) I have cases bearing more or less on this point or following, although none of them is exactly in point—this third exception—I must say that the only authority I have on this third point is essentially what has been said to me by several officials of the French Alien Property Custodian. But if you want to refer to some cases including some points coming rather near to this point, they are the following—the case of Nachman v. Gompers. This case is not reported officially, but I will give you a reference. This is the case of January 25th, 1922, which is spoken of in the number of March 5th, and March 6th, 1922, of the French legal paper called "Le Droit"—that is the Gompers case. Other cases coming also under this heading may be found in the numbers of the
157 1st, 2nd and 3rd of April, 1923; the number of the 8th of November, 1922—I do not have the title to these cases. They are not directly in point, but we can infer from these cases what I have stated.

I give the numbers of the issues for your information, November 8th, 1922; November 18th, 1921, and October 26, 1921, of the French legal paper called the "Gazette du Palais", to which I have referred already. Having admitted this practice—this third exception—the French Alien Property Custodian has said; "We must admit a counterpart of this exception; so even if a German has his domicile in France after January 20, 1920, but if the debt has been contracted in relying only on property lying in another state, the French Government will not pay the debt."

Q. You have just explained the circumstances under which a creditor of a German whose property has been sequestrated by the French Government, may secure the payment of the debt out of the sequestrated property. In explaining the circumstances, I assume that you have been referring to French creditors. Is that so? A. Well—insofar as creditors want to be paid out of property sequestrated in France, there is no difference whatever between French, allied or neutral creditors. This is stated expressly in the circular of June 24th, 1920, in the second part of it, and the text is this: (The witness roughly translates)—"It is for the benefit of these creditors, French, allied or neutral, that the texts relating to sequestration of property hitherto, and liquidation of such property, have foreseen the possibilities of settlement." That would include American citizens. A little further on the text repeats: "the payment of debts incurred by the liquidator will benefit all creditors, French, allied or neutral, the titles of which has
158 been verified."

Q. If a creditor is an American citizen and his debt arose on or about the 22nd day of March, 1915, could the citizen of the United States apply to the French Government or the French Alien Property Custodian, or sue in the French courts, and have his debt paid out of the proceeds of the property of his debtor in the hands of the French Government? A. No.

Mr. Hayes: Under no circumstances?

The Witness: Pardon me—you have said two different things. You have said: "could he sue the Alien Property Custodian and get the amount of his debt, paid out of this sequestrated property—the answer is no, of course. If you say: "could he under any circumstances go into a French court and have the amount of his debt paid,"—the answer is, yes, if the German is domiciled in France at present, or was domiciled there after January 10th, 1920, that would be all right. As far as suing the French Government or the Alien Property Custodian, that would not do on account of the fact that the debt is posterior to August 2nd, 1914.

Q. If a citizen of the United States had a debt against a German domiciled in France—— A. Domiciled at what time?

Q. After January 10th, 1920, that is domiciled after January 10th, 1920, which debt arose on or about the 22nd day of March, 1915, do you say that the American citizen could sue in a French court and secure collection of his debt? A. He could sue the German himself?

Q. Sue the German himself, yes. A. Oh, yes.

Q. After he has sued the German himself and secured the judgment in a French court, could he apply then to the Alien
159 property Custodian and have that judgment paid out of the assets of that particular German, in the hands of the Alien Property Custodian? A. No, because at that time the property does not belong any more to him—it belongs to the French Government.

Mr. Hayes: The Government has confiscated it?

The Witness: Yes; it belongs to the Government, of course. If you get a judgment against the German himself for that debt, you cannot have the judgment executed on the property which is in the hands of the Alien Property Custodian, because at the time it does not belong to the German.

By Mr. Hayes:

Q. Even if the German has no other property? A. Oh, of course it does not make any difference—this property does not belong to him.

Q. Do I understand you to testify that where a judgment was rendered against the German citizen and all the property he had out of which that judgment could be satisfied, has been sequestered and is in the hands of the French Government, there would be no recourse as against the Custodian? A. None whatever. The Germans have recognized by the Treaty of Versailles, this property does not belong any more to the subject of Germany, and the title was transferred to the different nations in which this property was situated. So this property does not belong any more to him.

Q. That comes about by operation of these sections of the Treaty you referred to, does it? A. Yes, 297.

Q. I see. Any decisions on that point? A. Well, I do not think there is, because the case is so very plain.

By Mr. Stanley:

Q. Do I understand you to say that the law of France is as
160 follows: In so far as any property or the proceeds thereof of a German, in the hands of the French Alien Property Custodian, is concerned, a citizen of the United States who was a creditor of the particular German could not secure the payment of his debt, if the debt arose after August 2nd 1914? A. Could not secure it out of the property in the hands of the Alien Property Custodian.

Q. If the citizen of the United States had a debt against the German whose property is in the hands of the French Government, or the French Alien Property Custodian and the debt arose prior to August 2nd, 1914, he could secure the payment of his debt out of the property of the debtor in the hands of the French Alien Property Custodian only, provided, that debt fell within one of the three classes which you have discussed heretofore? A. Yes.

Q. Suppose that a citizen of the United States secured a judgment on or about March 22nd, 1915, in a competent court in the United States, against a person whose property or the proceeds thereof is now, at this time, in the hands or possession of the French Government, or the French Alien Property Custodian, can the citizen of the United States make application to the French Government, to the French Alien Property Custodian, and secure the payment of the amount of the judgment secured in the competent court of the United States, out of the property now in the possession of the French Government or the French Alien Property Custodian?

Mr. Hayes: I object as immaterial, irrelevant and not parallel to the case at bar.

Q. You understand the question? A. Yes, I understand the question. I must make first two remarks. The first one is that under no circumstances money is paid out of the property, it is paid by the French Alien Property Custodian, out of the
161 proceeds of the sale of the property.

Q. I amend my question, then, so as to include the proceeds of the sale of the property. A. The Alien Property Custodian never pays anything out of property sequestrated. It always pays it and only pays it out of the proceeds of the liquidation which comes after the sequestration.

Mr. Hayes: Unless it is money? A. Yes, unless it is money. My first remark was to clear up the ground. My second remark, which will be explained, partly by the first one, is that all the sequestrations made by the French Government have not been followed by liquidation. Sometimes errors have been committed in the sequestration of property. Sometimes, according to some liberal rules, the French Government recognizes that the property, technically German, is substantially French, and it will turn over the property to the French proprietors of that property, or take some other proceedings. So when the property has been sequestrated that is not always

the end of it. A foreign creditor can later recover the amount of his claim out of that property if the sequestration has been lifted and the property given back to those from which it was taken; so that sometimes foreign creditors can recover quite well out of property which has been sequestrated, if later the sequestration is lifted, and that sometimes does happen.

Q. The property is turned back? A. The property is turned back.

By Mr. Stanley:

Q. You remember my question is directed only to the proceeds of the sale of the property, or property itself, actually in the hands of the French Government, or the French Alien Property
162 Custodian. A. Yes; I have made these remarks before going to the answer of the question itself; As far as the question is concerned, we must first know at what date was created the original debt under which the judgment had been rendered. In your system, I understand that there is a merger in the judgment, and the debt is created at that time. In case according to our doctrine of conflicts of laws, we have got to refer to American law, to know what is the date of the debt. But as far as this question of Alien Property Custodian's property is concerned, we are in administrative proceeding; and as far as that office works under equitable rules it will always refer to the date of the original debt, because, it would be too simple to change the date of the debt. You have got a debt prior to August 1914. If you want to have it refer to a later date; when your payment is asked from you. You just refuse to pay and you go into court and you have got the date shifted to a date posterior to August, 1914. But this would not be considered as the real date of the debt as far as the Alien Property Custodian is concerned.

Q. I further amend my question for the present by adding this: That you may assume in answering this question, that under American law, the law of the United States, that a judgment merges the original obligation with it, and that the judgment as such dates from the date of the judgment, and I told you in my assumption, that the judgment here was on or about the 22nd of March, 1915. A. Yes. I understand but my answer remains the same, as far as the French Alien Property Custodian goes, on an equity basis, in spite of the fact that in your law, the debt dates from the judgment — if the original debt which is the cause of action has been created prior to August, 1914, the French Alien Property Custodian will only consider the date of the original debt. So if the original debt
163 is prior to August 2nd, 1914, as a question of fairness, of equity, the practice of the French Alien Property Custodian will consider as the original date of the debt, the date at which the cause of action arose.

Q. In answer to my questions, then, you would say that the amount of the judgment could be collected out of the assets of the debtor or the proceeds of the sale of the assets of the debtor in the possession of the French Government, or the French Alien Property Custodian, provided the original debt upon which the judgment is founded arose prior to August 2nd, 1914, and further provided, that

that original debt fell within one of the three classes of debts which you have explained previously? A. Yes.

Q. Suppose a citizen of the United States secured in a French court on or about the 22nd day of March, 1915, a judgment for a sum of money against a person whose property, or the proceeds of the sale thereof, is in the possession of the French Government or the French Alien Property Custodian, can the citizen of the United States make application to the French Government or the French Alien Property Custodian and secure the payment of the amount of that judgment out of the property sequestrated, or the proceeds of the sale of the property which is held by the French Government or by the French Alien Property Custodian? A. I do not see exactly how a judgment could be gotten in France in war time against a German, because you have got to assume that if this property has been sequestrated in France he is an enemy subject, and being an enemy subject, if his domicile was in France, and if he was there in fact, he would be himself in a camp, a prisoner of the French Government, and a case could not be brought against him.

Q. Suppose this judgment had been secured in the French
164 courts under the circumstances which I have indicated prior to the outbreak of the war in Europe; that is to say, prior to the 31st of July, 1914—do you understand the question? A. Yes. Well, we fall here again into the three exceptions that I have mentioned. If this German debtor was at that time, that is to say prior to the outbreak of the war, domiciled in France, all his property, of course, would be subjected to the payment of his debts in the hands of the Alien Property Custodian of France.

Q. That is provided it came within the—— A. (Interrupting.) Provided the German was there before the war, or if the creditor had a lien, pledge or security of any kind, on his property, or provided that that debt has been incurred for something relating to this particular bit of property which is actually in the hands of the Alien Property Custodian.

Q. Then I understand your answer to be that under the circumstances which I have indicated, the citizen of the United States who has secured the judgment in the French courts prior to the outbreak of the war in Europe, could make application to the French Alien Property Custodian and secure the payment of his debt out of the proceeds of the sale of the property now in the possession of the Government or of the Custodian, provided the debt fell within one of these three classes? A. Yes.

Q. And is it true that the French administrative officials in paying that debt would look behind the judgment to ascertain whether the original debt fell within one of those three classes? A. No, because the judgment itself, being prior to the 2nd of August, 1914—the cause of action would necessarily be prior to the war—and the question could not be raised.

165 The question of date, since the judgment was prior to August 2nd, 1914.

Yes, in any event then, it would have to fall within one of those three classes that I have mentioned.

The document that states that is the circulaire sent out by the Minister of Justice to all the prosecuting attorneys in the French tribunals, dated June 24th, 1920, and the relevant parts of it are contained in a second part of this document which is composed of a general introduction and two parts.

(It is here stipulated, that the introduction and Part II of the Circulaire of the Minister of Justice of France, dated Paris, the 14th of June, 1920, taken from a book edited by Gilbert Gidell and H. E. Barrault, entitled Le Traite de Paix avec L'Allemagne, Due 28 Juin, 1919, Et Les Interests Prives, said circulaire being found at the bottom of pages 398 to the middle of page 399, and further, the matter from the bottom of page 402 to the end of the document or page 405. Said extracts to be translated from the French and attached to this record as a part hereof, and marked for identification Defendant's Exhibit 2, of this date.)

The portions of this document which have just been introduced into evidence, contain two of the exceptions heretofore referred to by me, the first and the second.

The third exception is this: The Alien Property Custodian will pay out of the proceeds of the liquidation, French, Allied or neutral creditor, whose debts arose at a date prior to August 2nd, 1914, when these debts are related to the property, which has been sequestrated in France, and when the creditor must reasonably be taken to have relied on this property as a general security for the payment of said debt. As I have stated before, this third exception is not
166 contained in any official document, and I know of it only by personal and direct inquiry to the proper officials and the Alien Property Custodian's office in Paris. Moreover, I have stated at the same time a certain number of references and cases which although not exactly in points, involved that point. One of those cases is Nachman v. Gompers. I do not remember the facts of the case enough to state them to the Court.

Q. Now you stated in respect to this exception a moment ago that the liquidator would pay debts of an equitable nature. Do you mean equitable as that word is used in common law jurisprudence? A. No.

When I speak of such claims as "equitable," or charge upon the property, I mean some act done with respect to the property, and I have been a little further than that, and I have said when any layman, or any business man, would understand this property is a guarantee for the debt. This is, you understand, a rather loose criterion. The Alien Property Custodian admitted the execution only by expounding the idea of liquidation, but you understand that this is no more than an administrative practice.

By Mr. Hayes:

Q. It is a question of administrative practice? A. Yes, if you just raise the point, and you go to the Alien Property Custodian, your claim will be admitted for consideration, and that is probably the reason why you do not find a case in point.

By Mr. Stanley:

When I say it is a question of administrative practice, that means that the liquidators having rather wide powers, saw fit to do it—but they had not laid down any definite text or general rule. If you go and see them and ask them whether your claim will be ad-
167 mitted or not, they will answer you as they did me, that the claim can be admitted, but that is all.

Q. I understand you to say then that the liquidators, although they have these powers, these broad powers, they exist by reason of the provisions of law, do they not? A. Yes; or more exactly by reason of the vagueness of the provisions of the law. Yes, it is a question of interpretation of the law by the liquidator. I have stated that the only official word about the right of the creditors is contained in this decree of October 23rd, 1919—it says that out of the funds deposited after the liquidation of the property would be taken sufficient money to settle the passive and the expenses of the liquidation, and this word "passive" is so vague that it has given very large powers to the administrative officials.

"It is stipulated that the law of October 7th, 1919, contained on pages 388 to the top of page 390, in the book above referred to, and the Circulaire, and the decree of October 23rd, 1919, contained on page 390 to the top of page 397, in the same book, may be introduced into evidence and will be attached hereto and marked for identification Defendants' Exhibit No. 3, with the translation thereof marked Exhibit 3-A, of this date; with all objections to materiality reserved by counsel for the plaintiffs."

Cross-examination.

By Mr. Hayes:

Q. Mr. Lepaulle, in regard to your qualifications, you have testified that you have been a practicing member of the French bar for the past—for a number of years? A. Yes.

Q. How long, sir? A. Five years.

Q. Are you familiar with the American Trading with *with*
168 the Enemy Act," Section 9, which refers to these matters?
A. Well, I have read it.

Q. Now, I would like to call your attention to Section 9, Subdivision E, being the amendment of June 5th, 1920, and I want to ask you what is your understanding of the phrase "Reciprocal Rights" as used in that section?

Mr. Stanley: I object to that question as calling for an interpretation of law, the law of the United States, which only the court in this case can make.

A. My understanding of the wor*k* Reciprocal, as far as I can make out, is that a foreign creditor of a German whose property has been sequestrated by the American Alien Property Custodian, can recover the amount of his debt out of the sequestrated property only if the

American creditor, going into the country from which the foreign creditor comes, would recover under similar circumstances, the amount of his debt out of property in the hands of said foreign Alien Property Custodian.

Q. In other words, the subdivision referred to in the American Act extends an invitation to other non-enemy nations to accord the same rights to American citizens in France which are accorded by this Section to French citizens in America?

Mr. Stanley: The same objection; on the same grounds.

A. As far as I can make out—that is not exactly what that means, that does not extend any invitation to any other nation to be just as kind with Americans as they are with foreigners. It means only, we will do it if you do it first.

Q. Doesn't that, in your judgment, amount to saying to the foreign nation, if you will accord to us the same rights as we ac-
169 cord to you, we will recognize you in our courts?

Mr. Stanley: The same objection; on the same ground.

Q. Otherwise not? Isn't it an invitation to join in these reciprocal rights accorded to foreigners in the two countries? A. From a legal point of view, no, not exactly. From a politic point of view, outside of the law, we may say, that Section 9 of the Trading with the Enemy Act seems made for the purpose of inducing kindness toward Americans. But from a purely and strictly legal point of view it means only: "do what you like, you are perfectly free to do what you like—we do not induce you to do anything, but we will do for you what you do for us," that is all. From a legal point of view, as far as I am competent in stating my own personal opinion about it, that is the meaning of this Section.

Yes, from a strictly legal point of view, it means that if you do not accord these same reciprocal rights to American citizens in France, in regard to the questions of property, we will accord the rights here to French citizens.

Mr. Stanley: The same objection upon the same ground.

(Continuing:) I mean by that, only that at first glance—that is my natural construction of the statute—not saying at all what it is or what it is not.

Q. Would it not, in your opinion, be an important right for the French Government to secure for its citizens, the right to file claims against the property of German citizens in the United States?

Mr. Stanley: The same objections upon the same grounds.

A. As far as it is an original question, I think of course, it would be a good thing to take such steps as would give, either directly or indirectly, greater right to French citizens in the United States.

Q. Have you considered, in forming your opinion, whether
170 the United States confiscated sequestered property of enemy aliens——

Mr. Stanley (interrupting): Objected to on the ground of immateriality.

A. The opinion I have just stated—in stating what the French Law was this morning, I did not think at all about the American Law, because there is no reciprocity clause in our laws, and the French Law has been made from the purely national point of view, without any reference to any foreign law.

So far as I know, the question of French reciprocity referred to in this Section E, has been entirely ignored by the Government of France. I said perfectly firmly that the attitude of the French Government in framing the law has had no reference at all to reciprocity; the laws have been made only from an entirely national point of view. This of course does not mean that there is any discrimination in favor of French creditors.

Q. Now again, what do you understand by the meaning of the word "reciprocity," as used in this Act?

Mr. Stanley: Objected to on the ground that it required an interpretation of a statute of the United States.

Q. (Continuing:) From the French point of view? A. I do not understand quite well how I can interpret an American statute from a French point of view. The word "reciprocity" is used in France sometimes, and when it is used, it means what I have stated before; that is to say, that foreignors will have certain rights here if our citizens there have the same rights under the same circumstances. Of course, the French Government could have done it, if they had seen fit to do it. It would not be against the sovereign power
171 of the state and no law, of course, would have stopped it from coming to the question from the point of view of reciprocity. What I say is that under existing laws in France, the method of approach to the problem has never been to consider what was done elsewhere, but only to treat the foreign creditor according to our own sentiment of justice and according to the provisions and technique of our law.

Q. By what means, in your judgment, could the French Government express its accord with reciprocal rights to citizens of the United States under the provisions of that Section—in accordance with the terms of that Section? A. Well, I do not see how that can be done. Because if one country says "We will do what you do," the other one has got to do something; if the second one says, "We will do what you do," they are like two people at one door, saying to each other, "pass first."

It could be done only by one of two ways: first—changing the actual law and enacting a new statute saying that we will grant reciprocal rights to foreign creditors, the second method, would be (without changing the actual law) by diplomatic treaties with the United States.

Q. How about an administrative decree? A. Well, an administrative decree would not be a proper way to change the actual situation.

Q. Where the law is silent upon the subject, is not such a matter

properly the subject of an administrative decree—where the law is silent, is not an administrative decree proper? A. Not always because we have got the whole bulk of civil law—all our common law, all kinds of precedents, which bind us, beside the statutes. It has been established by the circular of the Minister of Justice of June 24, 1920, that the general rule was that the Alien Property Custodian in France was not liable for the debts of the German whose property had been sequestered by sequestration, except in certain
172 cases. It is binding on the administrative officers under it, but of course, if the case comes up in the court, it is not binding on the court, only the decrees and the statutes and the Codes are binding upon the court. But the Minister of Justice having commented that way—Article 296 and 297, of the Peace Treaty, I do not see how a change could be made with the actual existing laws (except by a change of the whole policy).

Q. What is the authority and the function of an administrative decree, and what acts of government are expressed by an administrative decree? A. What we call a decree is rendered under the authority of one of the Ministers and of the President of the French Republic.

The Minister of Justice in the French Republic is called Mr. Cobrat. These decrees are generally made to settle the details of the law which the law has not provided for. For instance——

—. What general authority was there in the French Law for making administrative decrees? —. Well, for the whole nation, the President of the Republic, the Premier, and the divers Ministers, according to their own departments—for the "departments" (i. e. the different sections of the country) that is the Prefect, and for the towns, the Mayor. That is, the local laws. But as to national laws, the President and the members of his Cabinet are the only ones.

—. Are authorized to make administrative decrees upon what subject. —. Of course, there if, as a whole, the big problem there of divisions between the executive and legislative powers, and that is a very complicated and a very big question. We can just say briefly, of course, the Executive has only the right to apply the details of the law, and that the law is enacted by the legislative body,
173 and given the big frame, and the means of execution, the details and the working out of this law is ensured by administrative decrees.

Yes, the administrative decrees have all the force of law under the French system.

Administrative decrees are not limited to matters that have previously been enacted by statute. No, not exactly. In the question of police, of general order, or things of that kind, etc.——

Q. Do you regard this point of reciprocity, as a semi-diplomatic question?

Mr. Stanley: Objected to on the ground that it calls for opinion of the witness which he is not qualified to give.

A. Yes, as I said, the whole system is worked out on rather a complicated line; there have been so many decrees from the President of

the Republic—circulairies from the Ministers, there has been the law of October 7, 1919, so that I do not think that it would be sufficient to have an administrative decree to grant to Americans greater rights than are actually granted.

Yes, that would be a matter for the French Government itself to determine.

Q. It would be rather an important matter to ourselves.—. And rather a delicate matter——

Mr. Stanley: Objected to as immaterial.

—as affecting the relations between the two nations. That the American citizen should have the same rights in France on the question of property that the French have here.

I observe that in this Section E, sub-division of Section 9, of the American Act, that the language of the Act is "extends reciprocal rights," etc., and that there is no limitation in that Act as by
174 what means other should accord those rights. Yes, it says, "We will see what you do—do what you like—and then we will do the same."

Q. Yes, but communicate to us your accord, and then we will act accordingly. A. If we do not indicate anything to you at all, the proof is here. I am here.

Q. Is it customary to communicate their attitude on a thing of that sort officially? A. I do not think that this has been communicated to Washington officially. I think that there has been considered a municipal law matter.

By Mr. Stanley:

Q. When you say this is left open to the French Government to do as they please, you mean the law making power of France? A. I mean the sovereign power. The law could have provided for reciprocal clause—that is to say, the French Legislature.

By Mr. Hayes:

No, I would not at present express the opinion that the French Minister or the French President and his Cabinet could not, by an administrative decree, accord these reciprocal rights to American citizens in France.

Q. You would not express the opinion that the French Minister or the French President and his Cabinet could not, by an administrative decree, accord these reciprocal rights to American citizens in France? A. In my opinion, this could hardly be done, if that would mean: Give to Americans greater rights than those in fact granted to all creditors including the French creditors.

Why? Because you should repeal former decrees, partly the law of October 7, 1919, and that would be simply contrary to the organization and *a*pirit of our administrative system, to do this.

Q. That is, you say before they could make administrative
175 decree in regard to that matter, that they would have to go to the Legislature and get an express act authorizing them

to make such administrative decree, is that right? A. I think they would do that. This is an original function of administrative — that I have not had to consider before, and I think the normal way of dealing with this question would be to have the legislature grant in an act, those rights.

Q. Yes, but the question is, would you say that without going to the Legislature, that any act of the French Government, the President and his Cabinet, according such reciprocal rights, would be a nullity? A. I have not gone so far as that. I just say that the whole tradition of the administrative system is against it. Now, from the strict law point of view, they could probably pass an act which would repeal, as far as this act is the latest in date, other administrative acts which would give a contrary effect to this one. But, of course, they would always have against such decree the statute laws which may be contrary to it, because no administrative authority can repeal a statute.

No, there is nothing in the Act of October 7, 1919—in that law that would prohibit the French President and his cabinet from making an administrative decree according reciprocal rights to American citizens.

But you must go further than that. The laws you have got besides that—all the settled principles involved in the Civil Code, against which you cannot go.

Q. What principles does that offend with respect to the recovery of property in the hands of the Custodian that is not treated of in the Civil Code? A. No, but the settled rule of the Civil Code is that you have got to have the debtor pay at his domicile, and that he is personally responsible unless some special provision makes some special part of his property responsible. Now, to go
176 against that, you have got to have special rights granted to some definite Powers, by diplomatic treaties, or by statutes. I do not think the general principles of the Civil Code could be overthrown in this respect by a purely administrative decree especially because that would give to foreigners greater rights than to French creditors.

Q. You recall that the case under consideration refers now to a judgment rendered by a French court? A. I do not know anything about the particular facts of the present case.

Q. I am talking now about the case. Assume a case where a judgment is rendered by a French court—— A. (Interrupting.) Yes. The laws of France and the Civil Code provide for the collection of that judgment out of the property of the judgment debtor within the jurisdiction that renders the judgment. Our judgments are collected by something equivalent to your execution. There is a Sheriff and they can hold the property belonging to the debtor, but of course you must realize that the sequestrated property does not belong to the debtor. But the general principle prevails in France that the debt is collected out of the property of the debtor in France: Yes.

Now, the law with respect to the sequestration of a judgment

debtor's property takes that out of the provisions of the Civil Code, does it not—because you cannot follow with your execution the property of the judgment debtor into the hands of the Alien Property Custodian. Because this property does not belong any more to the debtor. So you cannot sue for property against a party which is not his—that has always been a law of the Civil Code. Not the sequestration, as I have said this morning, constituting the Government depositary of the property, by the law of liquidation
177 and especially the Treaty of Versailles, by which the Germans have recognized that all the property belonging to German citizens was no more than property under the enactment of the treaty, but became the property of the Government, of the divers nations in which this property was situated. The sequestration law was a war measure. And it was to take the property of the enemy and prevent the property of the enemy from fighting against the country which sequestrated it; yes.

As far as sequestration was concerned, the same rules applied all during the war, there was no change whatever in the civil law.

Yes, upon the sequestration of the property which the judgment creditor is looking to for the satisfaction of his judgment, there is substituted for the ordinary methods of execution against the property the provisions of law with respect to making claims against the property, in the hands of the Alien Property Custodian, the same as in the American "Trading with the Enemy Act".

I say up to the time of the Treaty of Versailles, that the Alien Property Custodian started merely as the custodian of the property, and that the judgment creditor in France having a judgment and claim, might proceed against the property but not against the Custodian under the circumstances which have been mentioned. I say, against the property of which he was the Custodian.

Q. The property, in other words, was subject to his judgment in the hands of the Custodian as long as he remained the Custodian, but upon the coming into effect on January 19, 1920, of the Versailles Treaty, there was substituted as between the parties signing that Treaty, this pooling of the claims in a what you would call a clearing house, under Section 296 and Section 297, and the claims had to go through that process instead of being made claims directly
178 against the property? A. Yes, you understand when those claims fall under Article 296, that is to say, between a Frenchman domiciled in France, and a German residing in Germany, at the date of January 10, 1920——

Q. Now, it was stated here—it was stated on the trial of this action that you had advised the Attorney General that American nationals were debarred from making claims against sequestrated enemy property, so-called, in the hands of the French Government, or its officials, by reason of the fact that America had failed to sign the Treaty of Versailles and that the Treaty precluded others from according reciprocal rights to American citizens similar to those of the "Trading with the Enemy Act," which that Act accorded to non-enemy and alien associates in the war, including France, is that correct?

Mr. Stanley: I object to that question as being a question upon an entirely improper subject, and being a question to the witness upon a statement of the court by counsel for the defendants, which statement would have no effect as evidential matter, and be of no force and effect in the case, whatsoever.

Yes, I understand the question. But I must say that the statement I have made at that time was only a personal letter sent to Mr. Stanley, and which was not supposed to get into the court at all; it was the first draft that I had made; and I would not like anybody to rely on this statement because I had not make in that letter a clear enough distinction between 296 and 297; and I may have made myself a confusion between the two articles. My excuse for this confusion is that it was a letter and not a statement published for the Court.

Mr. Stanley: It was not introduced as evidence, Mr. Le Paulle.

179 The Witness: This was a first draft of it, and after all, in studying a little more the question, afterwards, I realized that there was something—a mixture up in the French text, and this mixture was made because of an error.

Q. Mr. Stanley, in arguing the motion to rule out certain evidence I offered, stated at pages 90 and 91, as follows:

"and he assures us specifically that there is no such thing as reciprocity, and one of the principal reasons is this: France was a signatory to the Treaty of Versailles. That treaty provides that the debts of the various nations signing that treaty—that they shall be attended to in the clearing house, and that the debtors and creditors of the nations signing that treaty shall be the only ones that can go through that clearing house. Now, we are not a signatory to that Treaty, so that our nationals could not get their debts paid under that clearing house arrangement."

Are these statements true? A. Yes, that is true, American creditors cannot go through the clearing house, but this is a highly different question. This is 296. The question is this: When Germans are domiciled in Germany and Frenchmen domiciled in France, they lose by the existence of this clearing house, the right to go directly against their debtor in Germany to collect from him. The only right they have is to go to this clearing house in France and give the vouchers that they have. Now, if an American comes to this clearing house, he will not be admitted because there is no clearing house in the United States, because the Treaty of Versailles has not been ratified and they are not a party to it. The only foreigners who are admitted are the English, the Italian, and the Greek, subjects domiciled in France, because we have reciprocity treaties with these three nations. But this concerns only this. What I

180 say here is perfectly true (indicating the record), but concerns only Article 296 of the Peace Treaty, and has nothing

to do with sequestrated property and the present case which falls under 297.

By Mr. Stanley:

Q. Then, in so far as Mr. Hayes read from what I stated to the Court, you reaffirm that? A. I reaffirm that in so far as it is a question of suing a German debtor domiciled in Germany by a Frenchman residing in France, or an English, Italian or Greek subject, domiciled in France, but in making a sharp distinction between 296 and 297 I now deny that this has any influence on sequestrated property.

By Mr. Hayes:

Q. You are referring to a case where no judgment has been recovered against the German. A. Whether there is a judgment or not does not make any difference.

Q. I thought you said all the way through that one of the requirements of the French Law was that the German must be sued in the first instance in his own country and the judgment recovered against him before it could be recovered in France against French property? A. Oh, no; I have never said that. Generally speaking, before having execution, we have got to have a judgment or an executory title, but as far as the three exceptions I have stated, in which the creditor can go after the property, in the hands of the French Alien Property Custodian, there is absolutely no requirement of getting a judgment against him. Just suppose how it would be when you have a German corporation having its headquarters in France, before the beginning of the war, if no debts could be paid to their creditors without them having to bring suit and get a judgment? That would be impossible.

181 Q. Then, do I understand you to say now, that no American citizen having a French judgment in his favor, which was enforcible at the time it was rendered, and went to the sequestration of the debtor's property, by the French Government, has no means of recovering that property by application to the French Government, the same as is accorded to French citizens? A. Oh, yes, if there is some German property sequestrated in France, then under 297, if the American citizen has a debt prior to August 2nd, 1914, and moreover falls under one of the three exceptions I have stated, he will be allowed to recover the amount of his claim just as any other French, ally or neutral creditors—all these creditors being on an absolute foot of equality.

Q. Turn to the subject of French administrative decrees—there were a great many administrative decrees made during the war for which there was no express statutory authority? By "express statutory authority," what do you mean?

Q. I mean express acts of the Legislature, so that the President might make official decree covering certain matters? A. Oh, well, they had, of course, to remain within the scope of authority, otherwise the decree——

The general authority which the President and his Cabinet have for making official decrees in times of war, or at other times is, well, each one of the members of the Cabinet has got his own definite field, and as far as the President of the Republic is concerned, he can only make decrees in cases where there is a thing of national scope, which is provided for by a law, and which the modes of application are settled in, and in a certain number of other cases which are settled by the old settled decisions of our Supreme Administrative Court.

Yes, there is a certain amount of discretion in making these decrees, but you understand the French Administrative Court
182 which is called the Council of State—can say when this question comes up, this decree had no authority and is void.

Yes, just like Acts of your Congress that may not be constitutional, the Supreme Court can declare them invalid.

Yes, in other words, the discretion of the President and his Cabinet in making the administrative decrees is subject to the review of this Council, to which I refer, and of course there is a very long and complicated set of decisions stating what is within and what is without the scope of the authority.

The statutes of the France are published in the "Journal Officiale," which is a press belonging to the Government.

Are they given out generally? Oh, yes, it is sold to anybody who wants to buy it.

With respect to the publication of administrative decrees, all these are published in the official paper.

Yes, all administrative decrees. Oh, well, it is—it is published before it comes into force. It is published the day after when the decree is signed.

You find the publication of an official decree which would refer to a private matter in the "Journal Officiel."

If a decree relates to question which may be considered as diplomatic, it has to be published just the same. Of course diplomatic decrees may not be published—but that is a wholly different matter.

Q. Now, I will ask you this question. What do you think the effect with respect to binding the French Government would be of a communication made with the American State Depart-
183 ment in writing by the French Ambassador at Washington representing the Government—if his government authorized his to convey to the American Government, to accord reciprocal rights of American- in France, to those accorded French citizens by the United States with respect to the prosecuting of claims against sequestrated alien property in the United States—would such a communication be in accord with the authority of the French Government, or *with* you regard it as unofficial and meaningless?

Mr. Stanley: I object to the question.

A. If officially the statement was made in behalf of the French Government, by the Ambassador, the only thing for the American Government to do is, of course, to believe it. So no question as to

its validity could be raised as far as at least by the executive of the American Government. The French Government has absolutely the right to give official information to its Ambassador here, and if the statement is official, the American Government has got to assume it is a perfectly good statement.

Q. In other words, you would regard it as evidence of the fact that France would accord the same rights to the citizens of the United States. You would regard it as some evidence that France has accorded such rights to American citizens?

Mr. Sanley: I object.

A. In your question do you say "had accorded"? I have stated to you what the French law was. You have told me that America granted reciprocal rights. Therefore, by the mere effect of your Trading with the Enemy Act, the rights of a Frenchman here are the same as those of an American there. It follows necessarily that the rights of an American there are the same as those of a Frenchman here, and we are bound to conclude that the rights are
184 reciprocal. Therefore, the Ambassador could state that it was so. The mode of approach has never been the idea of reciprocity, but the idea of legality between foreigners and Frenchmen. You know the American law. You know what I have said about the French law; you may say whether there is reciprocity or not, and the Ambassador may say so, and if the French officials have compared it, they may say so.

Q. There is no question, but that the diplomatic usage accords full credit to the Ambassador for the communication which he makes from his Government to the Government to which he is sent.

Mr. Stanley: I object to the question.

Are you? A. Well, it is an official communication.

Q. Wouldn't you regard the official communication from the French Government made to the American Department of State in writing, and through its Ambassador, speaking for it, as better evidence of what the French Government would do and had done with respect to according reciprocal rights to French citizens in regard to sequestrated property in America than the opinion of private counsel?

Mr. Stanley: French counsel?
Mr. Hayes: Yes.

A. That is a question of evidence in an American Court.

Q. You are a lawyer. I want your opinion as to a matter of French Judgment. Wouldn't you think it—— A. As a question of international law, a statement made officially by an Ambassador is of course the best statement that you can have.

Q. The following communication was sent to the Department of State by the French Embassy, and this is copied into the record from a copy of a translation of the communication by the
185 State Department under the seal of Secretary Hughes—and this is a copy of it (showing witness copy).

The Witness (after hearing the reading of the communication from the French Embassy, addressed to the American Secretary of State, dated December 11th, 1922, signed, Jusserand, and offered and read into the record by the Plaintiffs (at anti page —) at the hearing on October 2nd, 1923, answered): Yes.

Q. That would seem to be, I think you have said, the best evidence that France has recorded the reciprocal rights referred to?

Mr. Stanley: I object.

A. Yes, but this is no way consistent with what I have said. As far as I know there has not been any diplomatic treaty made between the United States and France on this question of reciprocity. I imagine the things have gone this way: Informations have been asked for from the Ambassador here—to know from Paris what the law was. And in Paris they have said, "Well, we grant such number of rights here in France, and the Americans grant the same rights to French creditors, so there is in fact reciprocity between the rights we grant and the rights you grant" and I agree, and everyone must agree to the soundness of such reasoning which is perfectly consistent with the statement I have made, and which is perfectly clear-cut—that the mode of approach of the legislature in framing the laws—the mode of approach of administrative officials in making circular orders in their administrative decrees has never been the point of view of reciprocity, and that we cannot find a word about reciprocity in any of these decrees.

Q. Do you agree with the French Ambassador. A. Yes, I do.

186 Q. Would you agree with the French Embassy that that was equivalent to the administrative decree? No, it is not an administrative decree. It seems to me that this is only a statement asked for and given officially as to what the French law is. In my opinion this would not bind the French Government, it, as I understand it, it is a statement as to what the law is. The French Government has not made an expression of its will. The French Government on receiving the request for information from Washington has sent a letter saying: American creditors have such rights here—French creditors have the same rights there, you grant the same rights as we do, therefore we grant the same rights as you do. This statement of fact does not bind their will, for it is the fact, and there is nothing binding on them—they can change the law tomorrow. There is no official decree in that—as far as I can see. It is an official communication by the French Ambassador which he said his Government has authorized him to make officially to the American Secretary of State. A. That the law of France was such——

Q. No; here is the question: The question he says has been asked—Does France in like cases extend reciprocal rights to the citizens of the United States—for communication to the French Government, and "I have the honor to give your Excellency the assurance that the French Government grants to American nationals reciprocity

as it is meant in the American "Trading with the Enemy Act." A. "Grant" seems to mean, since the law of October 7, 1919, and has always granted the same rights to Americans which it grants to French citizens. That is how I understand it.

187 Yes, it is perfectly clear that the French Government has formerly and officially informed the United States Government that it accords and grants—not that it will grant—but that it does grant—it does grant and has in the past granted and continues to grant, as a matter of fact.

Yes, it makes a difference, because it is not an official paper that may be construed as a treaty. It is only a statement of what is done in France at the present time, that is something wholly different—don't you think so?

Q. I cannot see when the United States Government wants to know whether we are accorded these reciprocal rights, and the French Government does grant, no matter whether in the past or the present, it seems to be that that is evidence of the fact that these reciprocal rights are granted by France.

Mr. Stanley: I object to the question as not calling for an answer.

A. Now they are granted by France. We all agree that reciprocal rights are granted in France. Moreover, there is no discrimination against anybody, but former enemies. The same rights are granted in the French courts to a Frenchman, an allied or a neutral subject, so that we can say since the law of October 7, it has been also reciprocal in this sense. There are two senses of the word "reciprocity."

Q. This is qualified in this way: The French Government (reading) "The French Government grants to American nations reciprocity as it is meant in the American "Trading with the Enemy Act," section 9."

Mr. Stanley: I object to the question as not calling for an answer, and not being properly stated.

A. Now, let us see first of all, does this statement use the word "reciprocity" as the word reciprocity has been understood by me under Section 9 of the Trading with the Enemy Act. It is so?

188 You know in this statement, as I have said, there are two senses to the word reciprocity. Now, in which of these senses is it? Is it in the sense I have construed at first, or is it in the sense I have just given now. Take it both ways. When we began this cross-examination I have given the word reciprocity a sense that you must remember. The second sense is that Americans will have *in France* the same rights as Frenchmen.

Q. It says reciprocity as provided in the Trading with the Enemy Act. A. That is very different. In Trading with the Enemy Act—is the construction I have given the correct one?

Q. That is for you to say.

Mr. Stanley: I object to this line of questions. This is merely an argument between counsel and the witness.

A. The first question is to know what they mean by reciprocity. They say it is the same sense as in the Trading with the Enemy Act.

Q. The Act defines it? A. The Act is there, yes, but it is for you to decide.

Q. It means the same kinds of right that are given to French citizens in this country. Now don't you think very often that the French people in the United States have claims against German property that is sequestrated in the hands of the American Custodian, and that they should have the right — recover that property? A. Yes, it would be important to have it.

Mr. Stanley: I object; I move that it be stricken out as calling for an opinion as to what the French Law is.

Q. And don't you think that the French Republic had that in mind when the communication was sent through the official Embassy to the United States?

189 Mr. Stanley: I object to that as calling upon the witness to state what was in the minds of the French Government.

A. What was the date of that?

Q. December 11th, 1922? A. The reason why I do not think that this has been a diplomatic treatise, is that on August 5th, 1923, the officials of the French Alien Property Custodian, to whom the question was directly put by me, had absolutely no knowledge whatever of any special treatment provided for Americans.

Mr. Stanley: I object; the question is not responsive.

Mr. Hayes: I move to strike out the answer as not responsive in so far as it includes a statement made through Monsieur Lepaulles by officials of the Alien Property Custodian in France in charge of these particular matters—as hearsay.

A. I do not think this letter was made to define in any way the French creditors' rights here, because first of all it was not officially published in the French official papers, and second—

I know because an Alien Property Custodian official and myself saw all the documents on hand—no document of this kind was handed to me.

I believe I did examine all. I have seen three diplomatic treaties, one with Greece, one with Italy, and one with England; and I have not seen any with the United States. Of course, you cannot say when you have not seen a thing that it does not exist, but as far as my personal opinion is concerned, I am very much inclined to believe that this cannot be construed as a treaty by any means. As far as diplomatic treaties may be concerned, I cannot be ab-
190 solutely positive. I just stated what the general law of France is at present. And in this law—there is no question of reciprocity. Whether there is a diplomatic treaty or not, although I am inclined to believe that there is none, I cannot be positive, not being an expert on diplomacy, but being only acquainted with the actual French law.

Q. Suppose that it turns out that the property has been sequestrated as the property of a German, was the property of a French citizen, and that it was in the hands of the Alien Property Custodian, the French citizen had judgment due and the claimant being a claimant of the French courts—would not the judgment creditor enforce his claim—would not the Alien Property Custodian in France restore that money to the judgment debtor? A. Yes, sir, there was an error in sequestrating. The property would be restored by an administrative order and would be considered as having always belonged to the debtor. They would restore the whole property to him without interest.

Q. Is there any provision in the French law similar to the provision of the American Trading with the Enemy Act, Section B, by which the property of French born women who have married Germans or Austrians, was restored to the right, where the property originated with her family?

Mr. Stanley: Objected to as immaterial, irrelevant and incompetent.

A. No, I have not seen any provision in the law bearing on this particular point; but I know that there is a circular saying that under certain circumstances they would go beyond the technicalities of the law and restore it when they saw fit. So that would cover some of these cases. I do not know whether I can trace the section now.

I do not find the Act; I may come across it.

191 Redirect examination by Mr. Stanley:

Q. Referring to the letter of Jusserand, Secretary of State. If it were a fact, Mr. Lepaulles, that in making the statement he did in this letter, Mr. Jusserand was mistaken by any reason that you might conceive as to what the French law was, or what the French Government did, would the French courts or the French Alien Property Custodian be bound by the mistaken statement of Mr. Jusserand? A. No.

Mr. Hayes: I object to that question as immaterial, irrelevant and incompetent, and as making an unwarranted assumption.

Q. Under the French law, Mr. Lepaulles, does an official communication of an Ambassador of France have the force of law in the Republic of France?

Mr. Hayes: I object to that; it is impossible to answer that question.

Q. (Continuing:) Does it have the force of law? A. The Ambassador is in a foreign country and the mistakes he may make there are not ipso factor law in France, of course. And if by chance his statement is not in conformity with the French law, the legal French system cannot be changed by what the French Ambassador has said in a foreign country.

Q. If, as a matter of fact, in a case similar to the one of Madame Pauline Andre de la Mettrie and George Pratt de Gasquet James, the claim of an American citizen against the French Alien Property Custodian, would not be recognized, then nothing the Ambassador would say in a communication such as this would give it recognition, the claim of the American citizen's recognition? A. Well, as I understand it, the letter that we have in evidence is only a statement of what the French law is at present; well, of course, this letter and this statement of the Ambassador can have no import-
192 ance whatever upon French domestic law. The French law cannot be changed; if on the other hand it was a treaty passed between the United States and France, and this treaty was properly registered and notified, it would become a part of the French law, and the French administrative officials and the French courts would be bound by it.

Q. If a citizen of the United States had a claim against a German which arose prior to August 2nd, 1914, and that claim did not fall within one of the three classes which you have discussed, the fact that the French Ambassador may have stated in a letter that such a claim would be recognized by the French Government, would not give it recognition?

Mr. Hayes: Objected to as immaterial and incompetent.

A. Supposing that the French Ambassador had said that the claim would be recognized (and I think he has never said anything like that in his letter), and supposing this statement would not be considered as a diplomatic treaty, the said statement would have no effect on French courts, and a claim, under the circumstances stated in your question would not be recognized.

Q. Suppose the claim of the plaintiffs in this particular suit here—— A. Yes.

Q. (Continuing:) —arose prior to August 2nd, 1914, and did not come within one of these three classes, which you have named? A. Yes.

Q. Would the French courts or the French Alien Property Custodian recognize the claim now because the French Ambassador had made this statement in this letter?

Mr. Hayes: Objected to as immaterial, incompetent and not based upon any facts in the case.

A. No. The French Alien Property Custodian cannot be
193 bound by any kind of statement made by the Ambassador.

Q. In other words, if a statement of the Ambassador in the letter referred to, is contrary to anything you have stated here as being the law of France, you believe and it is your opinion that the French Ambassador is in error?

Mr. Hayes: Objected to as immaterial and irrelevant and incompetent.

A. I take it that the French Ambassador has not said anything inconsistent with my testimony, but if he had, I would be bound to

admit that he was in error, except if, by this letter, he expressed either some kind of diplomatic treaty which was passed by the French Government and the American Government, or some formal promise made by our Government. I have sworn that what I am saying is the law, and anything contrary to that must be taken by me as contrary to the law. Yes; in other words, if anything the French Ambassador said in that letter, or any statement he made as to what the law of France is, was contrary to anything I have said, to that extent he is in error unless that letter constitutes a duly executed treaty between the United States and France. Yes, if it were neither a treatise nor a formal promise.

Q. Is it your opinion from reading the letter which has been referred to, that what the French Ambassador meant when he said reciprocal rights in a case of this sort would be extended to citizens of the United States, that the French law would give to American citizens any right which it gave to Frenchmen?

Mr. Hayes: I object to that as immaterial and irrelevant.

A. That is the first time I have seen this letter, and the whole question is to know what is meant in this letter by the word "reciprocal." Now it is a clear thing that American creditors are treated just as French creditors. The French creditors have no
194 special favors whatever. Beside that, to know whether the foreign creditors have reciprocal rights—that is to say, in order to know whether or not an American creditor in France has the same right that a French creditor in the United States has, I would have to know what the American law is on this point to say whether the letter is right or wrong. I cannot make it out, because your own law refers only to the foreign law, and as far as reciprocity is concerned—you have by the mere effect of your Trading with the Enemy Act created reciprocal rights. Our law graats to American (and other) creditors in three clearly defined different classes certain rights against the product of the liquidation of sequestrated property.

By the mere working out of your law, French creditors in the United States have the same rights as American creditors in France, and then exists a reciprocity that we have not established, that exists nevertheless, and that we cannot destroy. So far as this is concerned, I understand perfectly well the statement made by the French Ambassador, or by authority of the French Ambassador.

Q. Now, in your cross-examination you were asked whether or not a creditor of a German whose property was in the hands of the Custodian during the time of mere custody could secure the payment of a claim out of that property, or secure what we call execution against the property, and you answered yes. Do I understand, when you answered yes, you meant you could secure such execution, if the claim arose prior to August 2nd, 1914, and fell within those three classes? A. No, I did not say. These proceedings are something quite aside from the Treaty of Versailles.

Q. Suppose before the Treaty of Versailles came into effect— A. Yes.

195 Q. —and the German's property is seized by the Custodian and held by him, the German living in Germany—could a French citizen sue in the French courts and secure a judgment against the German and then have his claim paid out of the property held by the Custodian? A. Well, he could not sue the German, because according to our rule of procedure you have got to sue the defendant in the place where he is—in his domicile: in that case, there would be no means to secure the payment of the debt out of the property, except you had an executory title, as certain deeds, for instance.

Recross-examination by Mr. Hayes:

Q. Do I understand you to question the authority of the French Embassy to make the communication of December 11th, 1922, to the United States Government? A. No.

Mr. Stanley: I object to that.

Q. And if the communication was authorized by the French Government, and the French Ambassador spoke for his government in delivering it, what would your opinion be as to its effect, and what would it constitute? A. If this may be construed as an affirmation, a solemn affirmation by the French Government that certain rights were to be granted to American citizens in France, the French Government is bound toward the United States government and must make proper decrees giving instructions to the administrative officers and the courts, so that the promise may be kept. If, on the other hand, this is to be considered only as a solemn and official statement of what the law of France is, this is not by itself alone binding upon the French courts.

The mere fact that the Ambassador and even the government in France has said that the law was such and such, is not binding upon any French authority.

196 Q. Then, you do not give any legal effect whatever to the assurance of the French Government to the United States Government of its according reciprocal rights corresponding to those in the "Trading with the Enemy Act"—to the Government of the United States? You say that that has no validity? A. I do not say that. If it is considered just as an assurance given to you that the French Government hereby grants now to you reciprocal rights, the French Government is liable towards the American Government for it. Now, of course, if the French Government gives this assurance to the American Government, and afterwards give no instructions to the administrative officials—of course the administrative officials cannot take this promise as the law. How could they even know that such a promise has been made? If the French Government had made this assurance, then the French Government would take steps to keep its word. But if you would show me this letter alone, I would say, "That is all right, but I have no decree, no law, no diplomatic treatise in proper form; I have not seen any order of the law from the domestic point of view and I cannot take notice

of this letter." That is exactly like if somebody would turn to a friend and say, "You can come home and stay there," and doesn't say anything to his butler. The man could go there and the butler would say, "I don't know you; I have no instructions from my master." Then the question would only be one of responsibility of one government toward another government.

Q. I am asking you to interpret this law and construe this letter. Now, I have got your opinion of it if it is regarded as a diplomatic communication, by which, as a matter of diplomacy, the French Government says in the interest of French citizens: "Yes, we accord these rights to you," it binds the French people; but if on the other hand you construe it to mean—if on the other hand you regarded it as a mere preliminary assurance of the French Government that it will in the future accord these reciprocal rights, then you say
197 it has not the force or law? A. I do not say that; I do not see any difference between one or the other. I do not distinguish the two at all. In both cases, whether the French Government grants these privileges by this letter or whether, by this letter it promises to grant it, it makes no difference. It makes no difference in the liability of the French Government to the American Government. The effect of this on the French administration is exactly the same—it has no effect whatever on it, one or the other. You have got to have—

If an American citizen went into a French court, on a French judgment against the French Custodian, and suppose that his right to recover that—to come to France and recover that—was made to depend upon whether France had accorded reciprocal rights to American citizens in France as those accorded by the "Trading with the Enemy Act" that the French citizen in American courts has respecting the sequestered property, and the American citizen produced a communication from the President of France and his cabinet to the United States Government in the language of this letter, that France did accord reciprocal rights to American citizens, do you think that the French courts would refuse to acknowldge that? A. I think they would. They would say that this is diplomatic correspondence; as long as it is not a treaty which has been adopted by France as part of the international law; as long as the domestic law has not been changed we have no official knowledge of it and we do not take notice of it.

Q. Then your testimony is this positively: The communication, assuming now that it was authorized by the French Government and communicated to the United States Government in the language which says (reading) "I have the honor to give your Honor the assurance that the French Government grants to the American
198 Government the reciprocal rights as given in the "Trading with the Enemy Act"—that that letter is worthless and of no value and practically a fake? A. No. As far as you American- are concerned, this creates the liability of our Government towards your government, and it is certain that the French Government is accustomed to keep its own word. And after having made such promise it would take the proper steps to give instructions to the

French officials and to the French courts by enacting a law or a decree, saying when an American creditor comes in such and such circumstance, you will do this or that; and this law or this decree will be binding, and put into effect the American rights. The only thing that I say is that this letter alone, if it is not followed by proper steps taken afterwards from the domestic point of view of the French law, would be valueless toward the French administrative officers and the French courts.

Q. You spoke of a circular of June 24th, 1920, which settled a question of law there in France—so a question of law could be settled by letter, could it, emanating from what source? A. A question of law is in fact very often settled by circular. I have quoted here several circulars giving the official construction of the Minister of Justice on such and such questions of law. They have that authority, oh, yes, of course. You ask, isn't this whole business an administrative matter? A. Well, if there was a French decree published in France and communicated to French officials saying specifically what rights are granted to American citizens, it would be all right.

Q. Don't you think that the French Government, after sending such a communication as that, if that was not sufficient to grant these rights, it should take steps to effect it?

Mr. Stanley: I object to that.

199 A. Well, if the French Government—if this is taken to be an assurance given to the American Government that reciprocal rights would be granted in the future—it would have taken those steps; but I am not inclined to construe it this way, because, as I have stated before, I have not seen, myself, any such decree or treaties, while I have seen other diplomatic treaties and decrees. The Alien Property Custodian had no notice of it in France, and I have practically seen all that could be seen on the subject, and I have absolutely no knowledge of a treaty relating to these questions; so my construction of this letter was more or less to take it as a statement that the law of France was reciprocal, as a matter of fact. In other words, the Government does not make any promises. As a matter of fact the law is reciprocal, but I come again to this point: Your law says reciprocal rights are granted. All right. It means that French citizens here will have in the future the rights of American citizens in France. What are the rights of the American in France? They are the rights which fall under the three exceptions which I have stated.

Q. They are reciprocal rights; the communication says that they are rights corresponding to the rights granted by the "Trading with the Enemy Act."

Mr. Stanley: Let him finish his answer.

A. The word "reciprocity" is all right. That is what I have said, that the American creditor in France will have the right of the French creditor in America. What are the rights that are given in France to the American creditor. Those are the very substantial rights, that I have stated this morning. Now, if a French creditor

comes here, he will have by the working out of the "Trading with the Enemy Act" the same rights. Now, if A. equals B, B equals A, and this is what we call reciprocal rights, by the mere working out of your own act.

I understand to be the meaning of the words, "As it is meant
200 in the American "Trading with the Enemy Act" that the American creditor in France has the right which the French creditor has in the United State.

Q. Now, in regard to construing this section of this letter, as bearing at the present time upon existing claims, or whether it is a mere promise of the reciprocal rights to be granted, I call your attention to this portion of that letter (reading): "I should be thankful to Your Excellency if you would kindly give notice of this fact to the Attorney General of the United States so that the claims of Mr. Gasquet James and of the Countess de la Mettrie may be admitted as early as possible"? A. I do not know the facts in your case. It may be that the case falls into one of the exceptions which I have stated this morning; I don't know. The French Government has no official authority whatever to say that evidently the actual case falls under these provisions.

Q. I want to ask you this, and I want you to understand that I do not say it offensively: The result of your statement is that you state you set up your statement, as against the official communication of the French Republic and the Cabinet?

Mr. Stanley: I object; I move that that be stricken out. It is argumentative.

A. I must say that the whole explanation that I have made has shown perfectly well that the rights are reciprocal. They are in accordance with the "Trading with the Enemy Act" which shows that the Frenchman will have the same rights as the American citizen. You give us these right so these are perfectly reciprocal rights; so it agrees perfectly with what it says here (indicating the letter). If, instead of saying what the law is, the letter means only that
formally and officially the President of the French Republic
201 grants this to the American citizens. I also agree because such a promise does not grant you any right that you had not already. I have to acknowledge it as a treaty, if it is a treaty. Whatever may be the construction you give to this letter, I therefore entirely agree with the statement made by the French Ambassador at Washington.

The following Exhibits with Le Paulle's deposition inserted in this Statement of Evidence at request of Mr. Stanley:

202 EXHIBITS TO DEPOSITION OF PIERRE LE PAULLE.

J. B. C.—12/1/23.

Pages 388—397.

No. 39090. Equity.

II. The Liquidation of Seized Properties.

The Law of October 7th, 1919, Regarding the Liquidation of Properties Being Subject to Measure of War Sequestration. (Journ. Off., Oct. 8, 1919.)

The Senate and the Chamber of Deputies have adopted.

The President of the Republic proclaims the law, the text of which is the following:

Article One.

The liquidation of properties, rights and interests of every kind which are or will be subject to measure of war sequestration is being authorized by the order of the president of the special tribunal of sequestration, beginning with the day of coming into force of the peace Treaty, concluding the war between France and the countries whose peoples resorted to it and on account of whom the measure of sequestration is made instrumental. The order authorizing the liquidation has been rendered upon the request of the public prosecutor, pursuant to the decision of the consulting commission established by means of the following article and upon the condition provided by the said article.

Article 2.

The order authorizing the liquidation is specifying the powers of the liquidator; it determines the condition upon which this action should be effected. If the evaluation of the properties according to the inventory should produce a rough asset equal to or over 100,000 francs, the condition of its liquidation should be set only after the decision of a consulting commission, established for that purpose under the authority of the keeper of seals and the arrangement of a minimum price of sale.

After fifteen days following the order of the president, the State may claim pre-emption at a minimum price set by the commission.

203 The administration of the Domains which will exercise the right of pre-emption for the account of the State shall have the power of retrocession, amicably and without charges, to departments, communes and other public institutions, of properties which it acquired.

If the State should reserve neither for its own use, the properties in question nor retrocede them amicably to departments, communes or other public institutions, the said properties should be sold at auctions on conditions ruling domain sales.

Article 3.

A decree rendered upon the motion of the keeper of seals shall determine all the proper measures assuring the execution of the present law.

It should particularly settle the conditions of the organization and function of the consulting commission, which will be entrusted with the rendering of opinion regarding the special measures to be adopted by the administration or the proceeds from the liquidated properties and follow up the business of the liquidation.

This commission will be composed of one senator and two representatives appointed by both Assemblies respectively, of a counsellor of civil affairs of the ministry of justice, of a counsellor general of the registry of domains, of a counsellor of the ministry of commerce, of an inspector of finances and of two members representing the groups of employers and workers, selected by the ministry of commerce and the ministry of labor.

It shall present annually a report on the business of liquidation which report should be addressed to the chief of State and to both Chambers.

Article 4.

The refugees to whom there were assigned for regular use the seized premises should remain there for six months from date of promulgation of the present law.

Article 5.

The amounts deriving from liquidations should be turned
204 over to the State because of the mortgage granted it by the peace treaties.

Article 6.

Accident sustained during liquidation by the French personnel of the seized establishments shall give a right to compensation.

In case of disagreement as to the sum of compensation between the administrators or liquidators and the claimants, the special tribunal of liquidation should decide in the last resort according to the memoirs.

Article 7.

The liquidation being concluded, the administrators-sequestrators should be given a receipt and discharged from their functions by the decision of the civil tribunal, assembled in the chamber of the council, with the understanding of the public prosecutor.

Article 8.

The charges of the Treasury imputed to the credits, and the legal expenses and expenses of sequestration added to the account of properties of the Alsatians and Lorrainians of French origin, should be excepted from all regular and requisite outlays connected with the management of the properties sequestered.

Article 9.

The present law shall be applicable to properties, rights and interests as indicated in article on-, existing in France, Algeria and in the colonies of the protectorate.

The present law has been considered and adopted by the Senat and by the Chamber of Deputies, and shall be executed as the law of the State.

205 Decree of October 23rd, 1919, Regarding the Application of the Law of October 7th, on Liquidation of Seized Properties. (Journ. Off., Oct. 30, 1919.)

Report for the President of the Republic of France.

Mr. PRESIDENT: Paris, October 23, 1919.

The law of October 7th, 1919, regarding the liquidation of seized properties provides, for the regulation of means of execution, a decree rendered upon my proposition.

The principles laid down in the law are defining precisely the regulation requiring that:

By subordinating the power of liquidation to the enforcement of the treaties, and entrusting the power of decision to judicial authority, as well as rendering to the judge the means of information and of special advice, the legislator distinctly indicated the character of the activity which he authorized; those being the measures for the application of dispositions of the peace treaty, measures influencing the various interests and therefore including exceptional guarantees, the highest of which is the exclusive attribution of competence to judicial authority.

Summing up those indications, I am estimating that the regulation provided by the law admits not only the organization of a consulting commission on war sequestrations as well as on the essential rules of the method of procedure, but also certain precepts having as the double object the maintenance within the legal limits the eventual initiatives of the executive factors in securing the seizure and giving consideration to all legitimate interests in the cause.

It appears to me that the liquidations, laid down in the treaties as a necessary procedure of redemption being inevitably imposed upon the nations whose responsibility material as well as moral is
206 beyond limit, should be regulated and conducted within the bounds of responsibilities of which they are the consequence and of compensations of which they are the means.

Should those considerations meet with your high approval, I would ask you to please sign the project of the following decree.

Please accept, Mr. President, the homage of my respectful affection.

The Keeper of Seals, the Minister of Justice:

LOUIS NAIL.

Tr. smw-w.

207 The President of the Republic of France Concerning the Report of the Keeper of Seals, the Minister of Justice.

Seen the law of October 7th, 1919, regarding the liquidation of properties being subject to measure of war sequestration, and especially article 3 of the said law.

Decree.

Article One.

The consulting commission on war sequestrations, established by means of article 2 of the law of October 7th, 1919, shall be placed under the authority of the Keeper of Seals. Its seat shall be in Paris.

The members of the said commission, the personnel of which has been determined by article 3 of the law of October 7th, 1919, shall be named according to the resolution of the Keeper of Seals.

The counsellor of civil affairs and of the seal shall take the place of the president during the absence of the latter.

The commission shall be provided with a permanent secretary's office, the function of which shall be secured under the authority of the counsellor of civil affairs, the chief of the bureau of sequestrations at the Ministry of justice and the director of the Office of Properties and private interests at the Ministry of Foreign Affairs.

The commission may secure the assistance of one or several technicians who shall be especially assigned to each function. They shall participate in consultations, in the activities of the commission reporting upon the action to which they may be designated.

Article 2.

The commission taking charge of the business as provided by article 2 of the law of October 7th, 1919, shall issue information at the occasion of a liquidation, the particular conditions to which action will be subordinated, consider the guarantees required from the purchasers, from the point of view of nationality as well as solvency and professional capacity. It shall arrange at the same time,
208 for the properties on sale, and the minimum price of sale.

It shall prepare, according to category of the properties, a statement as to clauses and general conditions applying to the liquidation taking place.

It shall issue, in addition to this, information on the entire object being seized by the Minister of Justice regarding the administration

or the proceeds from the properties the liquidation of which has been ordered as well as upon the procedure of the liquidation.

It shall proceed with all expedient investigations, either by itself, or by delegating for that purpose one of its members or a technician specially assigned in each case.

Art. 3.

During the month following the publication of the present decree, there shall be booked, for each affair, under the supervision of the public prosecutor, and centralized with the Ministry of Justice, the balance sheet or in its stead a detailed statement or estimate on the situation of all the properties, rights and interests placed under sequestration, be it by a special order, individual or collective—or through a decision rendered by application of article 2 of the law of January 22nd, 1916 and article 6 of the decree of February 28th, 1916, or by a general order.

All seizures ordered after the publication of the present decree shall be subject to the same measure, within fifteen days, following the order of sequestration.

Art. 4

The request of the public prosecutor, informing the president of the liquidation, shall be published, in abstract form, in the Journal Officiel, under special headline and in a periodical with legal advertisements, as to the place of sequestration as well as to the location of the properties. (1)

The abstract shall mention the owner of the properties, the rights and interests stated in the request, the nature and state of the said properties and the executive authority to whom the
209 request was submitted.

The order shall be executed no later than two months (2) after the publication provided in the first paragraph mentioned above.

Prior to the day of issue of the order, the attorney of the Republic may, upon the advice of the consulting commission, modify his previous application and submit the request to the president of the civil tribunal for the withdrawal of the sequestration.

Art. 5.

Until the expiration of the postponement set by paragraph 3 of the preceding article, all persons interested, others than subjects of the Powers that were at war with France or corporations controlled by them, may intervene by means of reference before the president executing the request of the liquidation. The payment shall be made to the public prosecutor and to the sequestrator.

(1) Compare decree of February 18, 1921, under p. 418.

(2) This postponement has been reduced to fifteen days by the decree of September 17, 1920, Journ. off. of Sept. 22, 1920, page 13910.

The subject of the Powers that were at war with France, who possessed that quality at the beginning of hostilities shall have no advantage in changing their nationality if, through the application of the peace treaties, they acquired the full right of nationality of an allied or associated Power, and if recognized as such, the said acquisition shall be definite and irrevocable.

An exceptional claim may be admitted by the tribunal assembled in the chamber of the council of mediation, in the manner provided above, of the subjects of the Powers that were at war with France who were admitted to residence in France and remained there without interruption for the entire duration of hostilities and who justified manifestly their affection for France.

The postponement stated in paragraph one, mentioned above, having passed no intervention of any person or whatever nature it may be shall be admitted in regard to the measure of sequestration affecting the properties of which liquidation was requested,
210 and the seizure resulting from the sequestration shall be definite in disregard of the opposition of persons physical or moral in the sense of inheritors or claimants.

Art. 6.

Authorizing liquidation the president of the civil tribunal shall specify the commission of the liquidator and, giving attention to the nature of properties, determine the subsequent procedure.

The business of liquidation shall be executed in the manner defined by the law of October 7th, 1919. In the absence of special stipulations of the said law, there shall be applied as a measure of execution regarding sales of real estate, the forms provided by articles 957 and following of the Code of civil procedure concerning sales of minor properties, and as the measure of execution regarding sales of commercial objects, the forms provided by the law of March 17th, 1919.

In every instance only the liquidator shall proceed with the business of liquidation, and the president of the civil tribunal shall be informed of all the incidents regarding sales.

The sales shall be made at public auctions in charge of the liquidator and the kind of auctions shall be such as those of sales of domain properties.

The official report on sales prepared by the liquidator shall be deposited together with the journal of proceeds in the records of the civil tribunal.

The commission of the liquidator may be entrusted for discharge to the administrator-sequestrator.

A technical agent may assist the liquidator or the administrator-sequestrator in the performance of one or a series of transactions.

In case of recall of the administrator-sequestrator he shall discontinue without delay his activity, relinquishing the seized properties within a fortnight following his recall and submit to the president of the civil tribunal his detailed account of administration supported by vouchers.
211

The liquidator shall take action or sustain all procedures already commenced and provide all the decrees of custodianship, in the locality and in place of the recalled administrator-sequestrator.

Art. 7.

The order authorizing liquidation of properties placed under sequestration shall not be subject to any recourse whatever.

An abstract stating the date of the decision, the nature and location of properties the liquidation of which has been ordered, as well as the name of the liquidator, shall be transmitted within twenty-four hours to the prefects and to the administrators of domains in the place of sequestration and the locality of the properties.

Art. 8.

The powers of the liquidator stated by the order of liquidation bearing all the privileges of the owner, may be modified by a subsequent order

Every transaction of the liquidator shall be authorized by the president of the civil tribunal, upon the advice of the Solicitor of the Republic.

The liquidator shall perform his functions within the limits of his mandate, under the supervision of the judicial authority following the administrative rules of responsibility and supervision requisite to administrators-sequestrators.

He shall deposit in Government trust the proceeds of the sales, in proportion of their realization, as well as all the cashed-in proceeds or rents.

He shall levy upon the funds thus deposited the amounts necessary for the settlement of the liability and for the expenses of the liquidation. (1)

All levies shall be subject to authorization of the president of the civil tribunal.

212 At any time during the liquidation, the public prosecutor may demand an account, with vouchers attached, of the state of the liquidation.

Art. 9.

There shall remain void and without effect, rendered in opposition to the administrator-sequestrator or the liquidator, all operations performed without the consent of the former or of the latter of those mandataries of justice, duly authorized for that purpose; operations involving distirbution, gratuitous or encumbered, total or partial, temporary or definite, or surrender of rights, affecting directly or indirectly, the properties under sequestration.

(1) Compare decree of February 18, 1921, under p. 418.

Art. 10.

The running expenses of every nature connected with the administration and liquidation of properties under sequestration, including occasions requiring action of the consulting commission, shall be levied on the assets of each sequestration.

In the absence of disposable resources, there shall be provided an advancement to defray expenses necessary for the execution of the mandate of the administrator-sequestrator or the liquidator, on conditions defined for all proceedings in civil matters, by article 128 of the decree of June 18, 1811.

There shall be considered as necessary expenses for the execution of the mandate of the administrator-sequestrator or the liquidator the cost of procedure and the material expenses justifying the administration or liquidation.

The said advancements shall be expressly authorized by an order of the president of the civil tribunal determining the amount of expenses, after having ascertained the impossibility of their clearance because of shortage of resources at disposal or such in the course of realization.

Advancements recognized as irretrievable shall be added to credits for legal expenses, according to special appropriation for account provided for the administrator-sequestrator or the liquidator,
213 by virtue of the decision of the Keeper of seals.

There also shall be added to the credits for legal expenses, in accordance with the resolution on the withdrawal, the sequestration expenses connected with the properties of the Alsatians and Lorrainians of French origin, with the exception of all such as expedient or necessary for the administration of the seized properties.

Within a month following the present decree, the solicitor of the Republic shall proceed with the examination of accounts of the administrator-sequestrator, restrained, due to the withdrawal ordered for the benefit of the Alsatian and Lorrainians of French origin. He shall determine, from among the charges satisfied by means of the seized assets, the reimbursement which shall be effected to the advantage of the beneficiary of the withdrawal.

Upon the request of the Solicitor of the Republic, endorsed by the Attorney General, the President shall retain, on the basis of the statement and in the manner provided by article 3 of the order of November 28, 1838, the amount of costs to be restituted to the claimants.

Art. 11.

The expenses and fees of the administrator-sequestrator or the liquidator shall be assessed, with the endorsement of the public prosecutor, by the president of the civil tribunal.

Their fees shall be determined according to importance of the properties left in their charge and accomplishments effected by them.

Art. 12.

With the conclusion of the administration, the mandatory of justice shall submit, together with the report, detailed and substantiated accounts of his activities in conformity with the civil tribunal assembled in the chamber of the council, which shall pass upon according to the report of a judge entrusted with it, and in the presence of the public prosecutor.

214 Prior to any request subject to approval, the attorney general together with the public prosecutor, shall address in connection with the operations effected a report to the keeper of seals, who may invite the opinion of the consulting commission, on the administration of the liquidator as well as on the operation of the liquidation.

Art. 13.

Complaints concerning the management of the administrators-sequestrators shall not be admitted and action relating thereto shall take place only before the tribunal in the locality of the sequestration and only through proceedings of the public prosecutor.

Art. 14.

In case where the administration of domains, acting for the account of the State, intends to exercise the right of pre-emption provided by article 2 of the law of October 7th, 1919, the director of the domains in the place of sequestration or in the locality of the properties, shall inform of his decision the solicitor of the Republic of the place of sequestration and of the liquidator. This announcement shall be made by registered letter with acknowledgment of receipt.

The action of the right of pre-emption shall be concluded, in regard to properties which it affected, in the proceedings of the liquidation, and their relinquishment by the liquidator to the account of those taking possession of the said properties for the administration of the domains. This taking of possession shall be verified by an official report, made out in three originals and signed by the director of domains and by the liquidator. One of the originals shall be deposited in the archives of the administration of the domains; the second shall be retained by the liquidator, and the third shall be deposited in the record of the civil tribunal in the place of sequestration.

The postponement of the option allowed by article 2 of the law of October 7th, 1919 having expired, the liquidator shall proceed

215 with the sale of the properties on conditions stated by the order, also provided by article 6 mentioned above.

Art. 15.

The Keeper of seals, the Minister of justice, shall be entrusted with the execution of the present decree the conditions of application of which will be determined by a decree.

Given in Paris, October 23rd 1919.

R. POINCARE.

For the President of the Republic:
The Keeper of seals, the Minister of Justice:

LOUIS NAIL.

Tr. smw.

216 Pages 398–399.

Circular of the Keeper of Seals, the Minister of Justice, the Attorney Generals, in Connection with the Reports of the Office of Properties and Private Interests and of the Prosecutors.

Paris, June 24, 1920.

Applying the law of March 10th, last, the office of properties and private interests, at 146 Avenue Malakoff in Paris (16th arr.) is performing the function of the French Office of verification and compensation, and as such it commenced business June the 15th. This attitude has, in regard to the administration of the Seizures, the consequences which I brought forth in my circular of March 3rd last and to which I especially would like to call your attention.

The office of compensation is, as I wish to recall, designated to secure the settlement of per-war debts and credits between Frenchmen and Germans residing within their national territory.

The competence of the offices of compensation is determined by the residence of the French and German creditors and debtors at the date of coming into force of the treaty. Following section iii part X of the Treaty of Versailles, the settlement of accounts of assets and liabilities of Germans is incumbent to the office of compensation and applicable to all Germans having resided in Germany at the date of January 10th, 1920.

However, sight should not be lost of the fact that section IV of the same part of the said diplomatic instrument providing for the liquidation of the properties, rights and interests of Germans in France, is referring such in order to determine the proper rules of such action, to internal law.

The French law of October 7th 1919 amended by the decree of the 23rd of the same month established a special system of liquidation applicable to seized German properties the application of which is, by judicial authority, limiting and modifying the competence of the office of compensation in matters of recovery of credits
217 due to Germans and payment of debts contracted by Germans if concerned Germans possessing properties in France, subject to seizure and liquidation.

The circular of March 3rd last contains, on the subject of recovery of credits and the payment of debts, specified rules to which I shall refer.

Enunciating them I wish to indicate that I shall complete them so that they would assure the functioning of the office of compensation.

The following is the object of the present instruction:

Tr. smw-w.

218 Traite de Paix, etc. Pages 402-405.

II. The Payment of Debts.

The definition of rules according to which payment of debts of German subjects be fulfilled, admits the determination of conditions within which there may be applied, either combined or excluded, the laws of October 7th, 1919 and of March 10, 1920.

The problem is more intricate as to the settlement of the liability than that of recovery of credits; in fact, in the case of the latter, the principle of territoriality of the deposits in custody in the allied countries, the seized German properties, as laid down in article 297*b*) of the Treaty, averts every possibility of controversy as to the instrumentality of the right of apprehension of said credits by the French government. I have not explained it therefore in the first part of this circular, except the question of the method.

If it be, to the contrary, the question of expenses encumbering the seized properties for liquidation, the delicate question of responsibility of the debtor be established and its solution should rule manifestly the entire auditing mechanism of the liability.

The responsibility of the German debtor follows the latter and one may contest only ones own credits maintaining all the rights against him. The application of those rights admits, however, in certain cases, particular modalities ensuing precisely from the Treaty and from legislation regarding seizures.

Thus, as has been explained in the circular of March 3rd we must lay down in principle, that the creditors of a German have to find out where he resides. The working of the system of compensation confirms this rule, as we have seen it, and it is the residence of the Frenchmen or the Germans, at the date of coming into force of the Treaty, that determines the competence of the Offices.

The institution of the Offices of compensation has therefore the effect, in this respect, but of creating obstacles to direct prosecution by the creditors.

219 It follows therefrom that there are only burdened with liability the interests belonging to Germans residing in France at the date of January 19th, 1920. This is the case, particularly, with the seized Joint Stock Companies having their head office in France. Regarding their branches or agencies we consider as their residence the country where the head office of the Company is established.

Concerning the Corporations of limited liabilities, when the responsible individual is answerable in the locality of his firm, the German partner residing outside of France held responsible in connection with his properties and may be investigated as to his title where he may be residing.

On the other hand—and I am referring for more details to the circular of March 3rd, 1920—the seizures of interests belong to Germans not residing in France at the date of January 10, 1920 are not liable to any charge.

The creditors who would proceed advantageously against their German debtors in their place of residence or those residing in Germany should address themselves to the Office of compensation.

The application of this rule appears to me as not causing any difficulty when it concerns the active elements seized in France, and belonging to Germans settled for instance in Germany; such as merchandise, claims, deposits of every kind, agencies, branches, etc. In these different suppositions the liquidators would not have to follow any regulations.

However, that are two instances in which the rule, which we are going to recall, should not be applied unconditionally.

In the first case there are the seizures applying to aggregate interests belonging to Germans who owned their so-called establishments in France, before the war. Those German subjects have, generally, left the territory of the Republic at the beginning of the hostilities. They settled outside of France and it is this new place of their establishment which the creditors should have scrupu-ously recorded.

220 It is not in the least true that we are not considering here a settlement of a pre-war liability. That is to say, the position of the creditors the minute they arrived at agreement with their debtor creating, legitimately the state of elements known at that time to his interest, in which they see the security of his engagements.

It is to the advantage of the creditors, the French, allied or neutrals, that the texts concerning war seizures and their liquidation have foreseen the possibilities of settlement.

The liquidation of properties of that nature, as regulared by the law of October 7th, 1919 and by the decree of the 25th of the same month, shall therefore pursue payment of the liability duly established, in view of the stern justifications upon which I need not dwell. I am restricting myself in recalling to you that the administrators—sequestrators as well as the liquidators may, if considered opportune, request the necessary documents by virtue of paragraph 10 of the amendment to section IV of part X of the Treaty, verifying the claim in their possession and addressing themselves regarding this object directly to the Office of compensation.

If the payment of the liability is, as stated before, to be pursued, it will be indispensable to assert simultaneously the combination of the laws of October 7th, 1919 and of March 10th, 1920; the regulations executed by the mandatory of justice in conformity with the law of liquidation should be of definite character. But, by

virtue of its proper rules (without which neither the judicial authority nor its auxiliaries may preoccupy themselves otherwise except with furnishing useful information) the Office of compensation will establish, in the name of the Germans concerned, a liability account, to be entirely separated and independent of that retained by the liquidator under the supervision of the Prosecutors and the President of the civil tribunal.

The liquidators should therefore furnish the Office of compensation only with a statement of debts receipted by them, and
221 made out according to a model subsequently furnished to them, stating as clearly as possible the detail of operations effected.

I especially must mention a consequence of importance deriving from the combination of the laws of October 7th, 1919 and of March 10th, 1920 obtruding upon this special subject.

The payment of debts secured by the liquidator will benefit all the creditors, French, allied or neutral, whose claims will be verified. Very often the assets seized may not be absorbed by settlements—those executed. It also may be proved in the meanwhile that the seizures are deficient. In such case the Competence of the Office of compensation will be of avail; we must not lose sight of the fact that if the German debtor is residing in Germany, the French creditor residing in France may appeal to the Office of compensation. In practice the liquidator will secure the partition of the asset among those entitled to it, dividing the amount pro rate of their credit. For the balance to be distributed the French creditors residing in France will apply to the Office of compensation. The creditors, allied or neutrals and the French should pursue the recovery of the object of their credit with all the means of the laws.

The liquidators should prepare a statement, according to a special model for deficient sequestrations.

The second instance in which the rule of referring the creditors to the debtors not residing in France cannot be applied unconditionally is that of seizures applied to properties with peculiar encumbrances (mortgages, salaries, pledges * * *). The privileged creditors are, beyond doubt, disqualified on conditions and limits adequately explained in my circular of February 11th last. They are not in the least favored by the right of preference to the proceed from the liquidation of the properties concerned.

In a case where the liquidator should pursue the recovery of a debt of a Frenchman, due to German seizure, solicited by the Office of compensation for the payment of a credit in Germany, the
222 liquidator could after obtaining advice from the Office defer such recovery until the question of either its recovery or the credits of the Frenchman with his German debtors would be settled (compare on this subject the instruction A the Office of properties and private interests, which appeared in the "Journal Officiel" of June 1, 1920).

I am perfectly aware of the intricate character of the collecting operations and especially of the settlement which the liquidators

must secure following the rules which I specified. It will be necessary for your substitutes to follow them closely and consult them assiduously.

LHOPITEAU.

Tr. smw-w.

223 *Deposition of Rene Pellerin.*

Taken under a Commission, issued out of the Supreme Court of the District of Columbia on behalf of the Plaintiffs, upon written interrogatories attached thereto by A. M. Thackera, Commissioner, at the offices of the United States Consul General in the City of Paris, France, on the 25th day of September, 1923, and duly certified by the Consul General on the 12th day of October, 1923.

My name is Rene Pellerin.

I am an Attorney-at-Law at the Civil Tribunal of the Seine; three Place St. Michel, Paris. I am a citizen of France since my birth, that is to say for forty years; born the twentieth of February, one thousand eight hundred and eighty-four, at Bourges, department of Cher, France.

I was educated at Bourges in a religious public school, until eighteen hundred and ninety-seven. After that, I studied law at the Faculty of Law of Paris.

224 I am an "avoue" (attorney-at-law) at the Civil Tribunal of the Seine. Appointed to this post by a decree of the President of the Republic, I have the privilege of representing litigants before the court at which I am accredited. I have been exercising this profession since the twentieth of September, one thousand nine hundred and twenty.

No, I am not the author of any legal work or treatise. I am a doctor of law of the Paris Faculty.

Yes, I have studied the laws with respect to alien property in France whenever clients who were creditors of aliens, requested me to take proceedings to obtain the payment of sums owning to them.

Q. (9). What constitutes the law of France upon the subject of non-enemy alien allies or associates rights to proceed in the collection of judgments of French courts in their favor or other claims out of sequestrated enemy property in the possession of the French Government or its officials—is it in the form of Administrative decrees? Explain as fully as possible. A. There is no law governing the situation of foreign creditors of enemy subjects. There are decrees establishing trade prohibition. As a consequence thereof, the courts sequestrated enemy property during the war, both in order to safeguard such property and in order to constitute an economic lien. The peace treaty authorized the liquidation of such sequestrated property. Such liquidation was effected by virtue of the law of October seventh, one thousand nine hundred and nineteen and of the decree of twenty-third October, one thousand nine hundred and nineteen. Moreover, circulars of the Minister of Justice ruled the details of application of same.

As to the nature and force of an administrative decree, as
225 distinguished from an act of the Legislative Body in France, a law established a right or an obligation; a decree can only be the interpretation of a law.

Q. (11). Where laws, or Administrative Decrees or other regulations are made in France affecting the rights of American citizens to proceed in France with the collection of judgments of French Courts recovered in their favor, or other claims out of the sequestrated property of enemy debtors, are such decrees or regulations affecting such alien allies regarded as of a diplomatic or semi-diplomatic nature and where involving reciprocal rights of the citizens of such countries in the Courts or tribunal of either, as partaking of the character of trea-ies? And if so, are they formally communicated to the affected Governments, and through what channels? A. There exist no special laws governing this special case. But circulars of the Ministry of Justice have specified that any individual, whether French, ally or neutral, could be paid from enemy property—provided of course, that his debt had been duly established. Up to the present, civil law has always been applied to French, allied or neutral creditors, unless reciprocity was guaranteed. Apart from civil law, the question has been specially regulated as regards England and Belgium. In fact, all allied or neutral foreigners are treated in France exactly like French citizens.

Q. (12). Are the rights of American citizens to proceed in Courts of France to collect judgments recovered in such courts out of sequestrated enemy property of their judgment debtors, and the corresponding rights of French citizens to proceed in the American Courts in like cases, the subject of any existing treaties between France and the United States, and if so, what treaty or treaties? And are they affected in any way by the Treaty of Versailles? A.
226 No. I know of no treaty governing this question. No, I do not think the reciprocal rights of American and French citizens are affected by the Treaty of Versailles.

Q. (13). I call your attention to the *printed copy* of Section 9 of the American Trading with the Enemy Act, as amended June 5th, 1920, procured from the Attorney General's Office, and hereto *annexed, and marked "A,"* and ask you to read the same, and particularly sub-division (*e*) thereof, introduced into the original act by the said amendment, which states that *"No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the War, unless such nation in like case extends reciprocal rights to citizens of the United States:"* and assume the case of an American citizen who recovered a decree or judgment in a French court prior to March 22nd, 1915, upon a claim existing prior to the declaration of war between France and Germany and Austria and their allies in 1914, against an executrix in France of an estate being administered by the French Court or tribunal rendering such decree, finding a *large* deficiency in the executrix account, and surcharging her account, and decreeing judgment against her for the amount of such deficiency in favor of the beneficiaries of the estate, in

such a case would France extend the right to the American judgment-creditor to pursue his remedies in France against the property of the judgment-debtor whose property in France had been sequestrated as enemy property by the French Government (as her property in America had, by the American Alien Property Custodian) for the satisfaction of his French judgment, in the hands or under the control of the French Government or its officials having possession of the same; and generally does the French Government extend and accord the same rights to American citizens in France to pursue their remedies under the laws of France as against sequestrated enemy property, as are accorded to French citizens against sequestrated property in like cases by the American Trading with the Enemy Act. A. The rights of American citizens in France are exactly similar to those of French citizens. The "Office des Biens et Interets Prives" (Private Interest and Property Bureau) which has now succeeded the Sequestrator and pays all the liabilities of owners of sequestrated property, pays allied and neutral foreigners as well as French citizens, provided the applicant's claim is duly established. In no case has a refusal been made, on a question of principle, to effect payment to an American citizen of a claim against an enemy subject whose property had been sequestrated in France.

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Q. (14). Is the reciprocity referred to in subdivision (*e*) of the Amended American Trading with the Enemy Act understood by France and in an international sense, as granting the same rights to American citizens in France, as against sequestrated enemy property, as are accorded to French citizens in the United States, in a similar case against sequestrated property by the American Custodian under the provisions of the American Trading with the Enemy Act, Section 9? A. An American law cannot be considered in France as being of an international character, but the French civil law grants equal rights to American and French citizens.

Q. (15). Assuming that a citizen of the United States on or before March 22nd, 1915, had secured a judgment of a French Court against a citizen of Germany residing in Germany or Austria at the time of the war for a misappropriation of the funds of an estate of which such German citizen was the executor or executrix, and awarding a judgment against her or him for the amount of such misappropriation; and assuming still further that property of the said German was seized by the French Government after the outbreak of the war and is now held by the French Government, could the aforesaid citizen of the United States under the laws of France, make application to the French Government or any officer thereof, or to any court in France and secure payment to him or her out of said property of the German in the possession of the French Government of the debt owing to him by reason of the aforesaid judgment? A. In the particular case referred to in the question, the claim of an American citizen would certainly be admitted and paid by the "Office des Biens et Interets Prives" entrusted with the liquidation of German property.

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Q. (16). Have the laws, decrees or circulars enacted, made and

published by the Government of France in respect to sequestrated property been framed with a view to protecting the material interests of American citizens or any other allied or associated powers as well as of Frenchmen? Explain what is the general purpose of these laws and decrees with respect to the rights of persons in or against sequestrated property as interpreted and applied by the French Government and Courts. A. The purpose of the sequestration was not to protect French interests but above all to administer during the war period and during such time as no enemy subject could reside in France, property which might have been lost if it had not been managed and administered. As enemy subjects were unable at that time to administer their property, at the beginning of the war the French Government merely provided for the administration of the property of absent enemy subjects without re-
229 gard to the protection of creditors, whatever their nationality might be.

Q. (17). Is the ability of France as an independent sovereignty, to accord reciprocal rights to American citizens corresponding to the rights accorded the subjects of nations associated with the United States in the prosecution of the late war, by the provisions of the American Trading with the Enemy Act, Section 9, in any way restricted by the Treaty of Versailles, for the reason that the United States is not a party to said Treaty, or otherwise? A. There is no restriction in the Treaty of Versailles.

Q. (18). Has the French Government by any decrees, laws or circulars attempted to exclude American citizens from pursuing rights acquired by them under French judgments against enemy judgment-debtors and their sequestrated property in the hands of the French Government? A. No, there exists no law in France preventing American citizens from pursuing their rights before the French courts against enemy debtors whose property is sequestrated in France, provided the claim concerns such property.

Q. (19). Assume that an American citizen had recovered a money judgment in the courts of France in 1915 against a citizen of Germany, upon a claim arising prior to the declaration of war between France and Germany and Austria and their allies and which judgment was enforcible against the property of the judgment-debtor, until thereafter seized as enemy property by the Government of France, or its duly authorized official; Will you state if there is any French law in any form of enactment that would authorize or tolerate the surrender of such property by the Government official having the custody of the same out of the jurisdiction of the French courts to the judgment debtor in placing it beyond the reach
230 of the American judgment-creditor, who was pursuing it in satisfaction of his judgment, with due notice to the French Government. A. No, I know of no law authorizing the French Government to place such property beyond the reach of the creditor who was entitled to attach such property.

Q. (20). I call your attention to what purports to be a copy of a communication addressed to the American Secretary of State, at

Washington, dated December 11, 1922, by the French Ambassador to the United States, on file in the American Department of State, which is in the words and figurs following, to wit:

"Embassy of the French Republic to the United States.

Washington, December 11, 1922.

(Here follows the communication referred to which is set forth at anti page —, folio —.)

And ask you to assume that such communication was so addressed and received, and so assuming, what the legal effect of such a communication would be as to its formal and authoritative expression of the action of the French Government in according reciprocal right to citizens of the United States as therein referred to. A. Before the existence of this American law the case of reciprocity had not been considered by us, as all allied or neutral foreigners were treated in the same way as if they had been French. There cannot be found a single case of refusal on the part of the "Office des Biens et Interets Prives" of France, to effect payment to an American citizen, out of the proceeds of sequestrated property, of a duly established claim.

Q. (21). Will you state anything further that occurs to you which will throw light upon any of the questions propounded to you in any of the foregoing interrogatories, and which will amplify
231 your answers thereto, and which will be of any benefit to either of the parties thereto, or be material to the subject of this examination? If yes, set forth the same fully and at large. A. I have not been able to find in collections of French court decisions, any decision refusing, for a question of principle, the possibility for an American citizen creditor of a foreigner, to obtain payment out of the proceeds of sequestrated property. If the question has never been submitted to the French courts, it is because the "Office des Biens et Interets Prives" has always paid the claims of American citizens, as those of French citizens, out of the proceeds of sequestrated property, without any difficulties being raised. Further, two circulars of the Minister of Justice to the Attorneys-General of the Courts of Appeals, bearing date the third of March one thousand nine hundred and twenty and the twenty-fourth of June one thousand nine hundred and twenty-one, provide that the settlement of liabilities must be effected by the liquidator of the sequestrated property in the widest possible spirit. The first circular (page sixteen) states that "the settlement of liabilities shall be effected by the liquidators after full proof has been made of the rights of each creditor, whether of French, allied or neutral nationality." No restriction is made in regard to an American creditor. Likewise, the circular of June twenty-fourth one thousand nine hundred and twenty-one, states that "It is for the benefit of French, allied or neutral creditors that the texts relating to war sequestrations and to

the liquidation of the same, have provided for posibilities of settlement."

End of deposition.

NOTE.—The terms "American Government" and "American citizen" or "Citizens," as used in the foregoing interrogatories, are
232 to be understood as referring to the Government and Citizens of the United States of America.

R. PELLERIN,
F. FRIKART,
Interpreter.

A. M. THACKARA,
Commissioner.

(Seal of American Consulate General.)

(The printed copy of Section 9 of the American Trading with the Enemy Act, marked "A," and annexed to the foregoing deposition, entitled "An Act To Amend Section 9 of an Act entitled 'An Act to define, regulate, and punish trading with the enemy, and for other purposes,' approved October 6, 1917, as amended, on June 5, 1920, was omitted in the copying of the foregoing deposition.")

UNITED STATES CONSULATE GENERAL,
City of Paris, Republic of France, ss:

Certificate follows, concluding:
Witness my hand and seal this 12th day of October A. D. 1923.
[SEAL.] A. M. THACKARA,
Commissioner, Consul-General of the United States of America at Paris (France).

Trial Resumed December 1st, 1923.

Mr. Hayes: If your Honor, please, there is one question here that, before proceeding with the argument, I want to have an understanding about. I called the other day for the receipt which the Alien Property Custodian gave to the Farmers Loan and Trust Company at the time they sequestered this property. Mr. Geller had it over here, brought it over two or three times, and Mr. Stanley called
233 attention to the fact that the Custodian had admitted that the property had been sequestered. So it went at that. I have written and asked Mr. Geller if he would produce the receipt here, and Mr. Stanley had it here, and I understand there is no dispute about that, Mr. Stanley, is not that the way? I want to put that in to identify this particular property that has been *sq*uestered.

(Discussion.)

The Court: I take it that anything that is in the files of the Alien Property Custodian might be considered as being in the case—anything relating to the seizure?

Mr. Stanley (producing paper): Here is a statement of the property of Countess James, made out by the Custodian's accountants. It is a mere copy, as of January 1st, 1921. That has not been materially altered since, except perhaps as to administration fees or something of that sort. I am quite willing that this statement here be put in the record. If I had got this notice sooner—I have not got it at all, as a matter of fact—I should have been glad to have brought that down.

The Court: Is that what you wanted, Mr. Hayes?

Mr. Hayes: Yes, sir. I think that is all.

(Document referred to was thereupon marked by the reporter "Plaintiffs' Exhibit No. 12.")

(During the hearing of the above entitled cause, and after argument heard by the Court, the following proceedings were had:)

The Court: I will get Judge Hoehling's opinion. It is out of respect I am doing it, because I have little doubt that he will say if there is a Court of Appeals case controlling it, that is different.

Mr. Hayes: We may not be present. Will you ask Judge
234 Hoehling if he has examined the Mexicano Bank case?

The Court: No, indeed.

Mr. Hayes: If the case is distinguishable on the fact, then it is not overruled.

The Court: I have no hesitancy taking a case that he never had. If he had passed on it, I would follow him. But he never decided it.

Mr. Hayes: Would you hold now in this case that the decision in the Mexicano Bank case overruled Judge Hoehling?

The Court: No; because I don't know what he decided. I say it controls this case.

Mr. Hayes: So is this in the record in this case, or do I have to offer it, the motion and the decision?

The Court: That is in the record.

Mr. Hayes: That will show what was decided.

The Court: That is in the record.

Mr. Hayes: May I ask this: Does your Honor make it a practice of the court to make findings? Do you want us to hand up requests to find?

The Court: No; I think the practice ought to be that way, to make some finding, but that has never been the practice in the District. I will make a finding now. I see we have a reporter present *how*. I hold that the claim does not arise with reference to this money. I hold, as a matter of fact, that in a case of this kind there was no reciprocity, because as I read the testimony of the two French experts, I believe it is the law of France, and they testify to it, that American citizens could not go to France now and establish—not file; anybody can file a claim—but could not go and establish a claim on these facts against the sequestered property in France. That is my view of it. I have read that testimony over twice.

235 Mr. Hayes: Did you read Pellerin's?

The Court: Yes. He answered the two interrogatories—his answers to the 15th and 18th interrogatories gave me a little

doubt about the matter, but I went back and read the whole thing over again. The 15th question is the question that assumes "That a citizen of the United States on or before March 22nd, 1915, had secured a judgment of a French court against a citizen of Germany residing in Germany or Austria at the time of the war for a misappropriation of funds of an estate of which such German citizen was an executor or an executrix, and awarding a judgment against her or him for the amount of such misappropriation; and assuming still further that property of the said German was seized by the French Government after the outbreak of the war and is now held by the French Government, could the aforesaid citizen of the United States, under the laws of France, make application to the French Government or any officer thereof, or to any court in France and secure judgment to him or her out of said property of the German in the possession of the French Government of the debt owing to him by reason of the aforesaid judgment?"

And he says: "In the particular case referred to in the question, the claim of an American citizen would certainly be admitted and paid by the 'Office des Biens et Interets Prives' entrusted with the liquidation of German property."

Maybe to that extent there is a contradiction; but he does not point out in what one of those three exceptions, if you want to call them that, any such possession would — handled.

And then in the 18th interrogatory, he is asked:

"Has the French Government by any decrees, laws or circulars attempted to exclude American citizens from pursuing rights acquired by them under French judgments against enemy judg-
236 ment-debtors and their sequestrated property in the hands of the French Government?"

He says: "No, there exists no law in France preventing American citizens from pursuing their rights before the French courts against enemy debtors whose property is sequestrated in France, provided, the claim concerns such property."

Now, I take it that that shows that his fifteenth answer is to be taken in the same way that his other answers were,—"provided the claim concerned such property".

So, I find as a fact that while the law of France is that an allied —I suppose we have to call ourselves an "associated" power—while the citizen of an allied or neutral power has exactly the same rights in the French courts as a Frenchman has, to that extent there is reciprocity, I do not think there is any power in the French Court to let a French citizen recover under those circumstances. In other words, there isn't any reciprocity as to the particular thing that we have under consideration here. Now, I think those are the only two points in the case.

Mr. Stanley: Is that a ruling your Honor is making now?

The Court: I am only indicating my views. And they will stand subject—well, I will let you know on Monday, I suppose, or Tuesday, that I have seen no reason to change my mind, and that what I now say stands as my decision of the case. And I will file a memorandum to that effect, and you can settle the decree on that.

Mr. Stanley: May I ask your Honor this, please: Even if Justice Hoehling should say that he decided the point of law, and you follow it—he will not, I think—but if he does, then if you still retain your view of reciprocity, the bill must be dismissed nevertheless, because he averred it, and we denied it?

237 The Court: Yes.

Mr. Stanley: Now, I want this in the record——

Mr. Hayes (interrupting): I object. The case is now closed.

The Court: It was closed, and now it is open. Go ahead.

Mr. Stanley: In the statement of account—I am explaining a custom—when a claim is filed with the Custodian and is sent to the Department of Justice, they send a statement of the property.

Now, what they say is perfectly clear, "Property except cash to be returned", which means if the Department passes on it favorably this list is the one that will have to be returned, if they decide on the case. Now, I should have put into the record the statement——

Mr. Hayes: I object to it. This is evidence.

Mr. Stanley: I will swear to it, if you want me to.

Mr. Hayes: I object.

The Court: It is a mere bookkeeping entry, and it cannot be said that a mere bookkeeper can enter the United States out of its rights.

Mr. Hayes: Then go on the stand.

Mr Stanley: All we want is that this is the property we hold. And I ask the Court that this may be considered the property we seized and hold.

The Court: Yes.

Mr. Hayes: I object to it unless he goes on the stand and submits to an examination about it.

The Court: It was offered for that one purpose, and was so considered. Even if it was offered in its entirety, as I say, I am

238 not going to let a bookkeeping entry enter the United States out of court. In fact, I had that question up, I think, in some other case. They tried to make use of some figures that were compiled in the case. The Alien Property Custodian, or the Attorney General, or anybody else, or this Court, cannot put the United States out of Court, except by the proof of some facts or other which bring them within the law. The Attorney General might say today, "We are going to return that property to Mrs. James," and he could tomorrow say, "We are not going to return it to her."

Mr. Hayes: I would like to have it on the record where that paper was taken from.

The Court: I take it from the Alien Property Custodian.

Mr. Hayes: And part of his records?

Mr. Stanley: I will tell you what it is.

Mr. Hayes: Tell me where it was produced from. It speaks for itself what it is.

Mr. Stanley: It came from my brief case; that is where it came from.

Mr. Hayes: Your Honor told him this morning to produce the paper.

Mr. Stanley: He didn't tell me that.

The Court: No.

Mr. Hayes: Didn't you tell him anything in the files of the Custodian should be produced here?

Mr. Stanley: He did not.

The Court: We were talking about the question of what it was the Alien Property Custodian had taken over; and that was all. And I said anything that the Alien Property Custodian had to show was taken over could be produced.

Mr. Hayes: I want it to show that this did not come from
239 the young gentleman's brief case, but from the Atorney General's Department.

Mr. Stanley: You can't show that, sir.

Mr. Hayes: Then I want to know where it comes from.

The Court: Mr. Stanley is here representing the Alien Property Custodian, and he produces it; that is where it came from.

Now, there is no substance in this thing, but I will allow the Alien Property Custodian to produce the records over here showing what he receipted for, if you want to delay the case for that purpose. But I do not think it is necessary.

Mr. Stanley: The only thing I wanted to do here—there happens to be in this a statement—I do not object to showing what we have. But something was made of the fact that there is a statement that that was property that was to be returned.

The Court: It was not admitted for any such purpose. I never heard it until Mr. Hayes mentioned it. And the purpose for which it was produced—I think we had a talk this morning about what was seized, and as an accomodation showing what it was, this was produced, and that is the only purpose.

The Clerk (Mr. O'Connell): This paper is marked "Plaintiff's Exhibit 12, J. B. C." Is it to be filed?

Mr. Hayes: Yes.

The Court: No; it need not be filed. You may have a copy of it. It is not an original paper.

The Clerk (Mr. O'Connell): I did not think so, but I have heard so much talk about it, I wanted to be sure of it.

The Court: No; it is marked as an exhibit and subject to the call of the Court at any time.

Mr. Hayes: Can this be copied into the record?

240 The Court: No. What part of that paper do you want to offer?

Mr. Hayes: I offer the whole paper.

The Court: No.

Mr. Stanley: I object to it, except as a mere itemization of the property named.

The Court: Yes.

Mr. Hayes: It is too late.

Mr. Stanley: And only that part will be copied into the record?

The Court: There is no need copying anything into the record. That part excluded will be marked. I suppose you take exception to that?

Mr. Hayes: I do.

The Court: That is marked, and it is always under the control of the Court. The parties are not required to leave the papres or exhibits in the court, except when it is necessary to impound them. But if you make up a statement of the evidence, it is available, and that paper is available.

Mr. Hayes: How can I have a copy of it in the meantime?

Mr. Stanley: I can give him a copy of the assets.

Mr. Hayes: I want the whole thing.

Mr. Stanley: I will not give it, unless the Court orders me to.

Mr. Hayes: That paper was produced here.

The Court: Here is the situation, Mr. Stanley: That paper was produced. That part which I admitted is admitted, but that part which is excluded is excluded, and they take exception to it and want to raise the question of error which they think I made in excluding it, and they are entitled to have it go into the record on appeal.

Mr. Stanley: I do not really care. I think it is mere
241 pettifogging.

Mr. Hayes: Then let it be copied into the record.

The Court: That paper is in your possession, and will be available when it is necessary.

Mr. Hayes: Can't we have a copy of it now? We need it promptly.

The Court: I will tell you what is fair about it, Mr. Stanley. That was produced here in a perfectly voluntary way to show the assets, and that is all it ought to be used for. Nevertheless, they claim it is error for me not to permit its being used for anything else, and such being the situation, the only way they can have my error, if it is one, reviewed, is by having that which I excluded in the record, as a thing which was excluded. It frequently happens that way.

Mr. Stanley: Well, I should have gotten a statement of the account, I suppose. My good intentions have been taken advantage of, for the first time since I have been practicing at the bar.

The Court: I think so.

Mr. Hayes: Mr. Geller has had this in his pocket every day, and was willing to produce it, if he were here.

Mr. Johnson: We need this now, this moment. Mr. Stanley is taking it away with him.

The Court: I would ask the Attorney General to furnish a copy.

Mr. Stanley: I would be very glad to comply with your Honor's request.

Mr. Hayes: Wouldn't it be better to have it copied?

The Court: We would have to wait here for that purpose. How long is it?

Mr. Stanley: I will let the reporter take it, and he can send it back to me.

242 (The paper marked "Plaintiffs' Exhibit 12, J. B. C.," is as follows):

Alien Property Custodian.

Claim 5309.

Statement of Property Taken Over, under Trust 10945, in the Name of Countess Elizabeth T. P. de Gasquet James, Except Payments Received by Depositary Since Last Report.

January 3, 1921.

Report	Received from—	Property received.	Income.	Property except cash to be returned.	Cash to be returned.
8810	Farmers Loan & Trust Co., New York City, N. Y.	Cash income from trust fund under trust agreement between enemy and reporter	$295.55	All right, tile & interest in Trust fund held by the Farmers Loan & Trust Company, N. Y. City, as trustees.	3,394.98
		Additional amount	3,099.43		1,869.25
		Income from trust fund to 8/24/18:			
3350	Do.	Cash balance	2,848.28		
Do.	Do.	Interest due Dec., 1917	11.65		
		" " May, 1918	27.40		
					2,887.33
Do.	Do.	2 Bonds at $500 Republican Dominican 20802/3	.....	These securities held by the Farmers Loan & Trust Company, N. Y. City, as depositary.	

Statement of Property Taken Over—Continued.

			Income.	
Farmers Loan & Trust Company, N. Y. C.	Cash rec'd from Trustees	9/ 4/18	49.50	
		10/ 2/18	936.05	
		11/ 1/18	705.38	
		12/ 4/18	293.29	
		1/13/19	944.98	
		3/10/19	163.66	
		5/ 9/19	1,008.71	
		5/10/19	455.40	
		6/10/19	785.94	
		7/ 8/19	770.96	
		8/21/19	361.10	
		9/ 5 to 11/6 /19	1,703.79	
		12/4 /19	550.05	
		1/6 /20	861.77	
		2/11/20	370.26	
		5/10/20	1,920.36	
		6/3 /20	1,395.19	
		8/7 /20	396.00	
			13,681.39	
	Disbursements:			
	Insurance & Postage	$10.00		
	General expense (cable)	3.10		
	Depositary Comm	136.81		
			150.31	13,531.08
Total in Trust				$21,622.64

On December 2nd, 1923, the Court handed down the following:

243 *Memorandum.*

Mr. Justice Hoehling has informed me that there is no reason why this case should not be decided without giving any consideration to his ruling on the demurrer. Consequently it is decided as indicated upon the final hearing, and a decree may be entered accordingly settling decree on notice.

WALTER I. McCOY,
Chief Justice.

244 Now comes the plaintiffs Pauline Andre de la Mettrie and George Pratt de Gasquet James by their attorney J. Noble Hayes, and present to the Court in duplicate the foregoing Statement of Evidence, which being found true and correct is now for then December 17, 1923, allowed, signed, sealed and filed and made a part of the record this 11th day of February, 1924.

WALTER I. McCOY,
Justice.

I consent to the above statement of evidence.

DEAN HILL STANLEY,
Counsel for Defendants Miller & White.

I consent to the above statement of evidence.

WM. J. NEALE,
Of Counsel for Defendant James.

245 [Endorsed:] Filed Feb. 11, 1924. Morgan H. Beach, clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 4137. Pauline Andre De La Mettrie et al., appellants, vs. Elizabeth Pratt De Gasquet James et al. and No. 4138. David Keane, receiver, appellant, vs. Elizabeth Pratt De Gasquet James et al. Court of Appeals, District of Columbia. Filed Mar. 26, 1924. Henry W. Hodges, clerk.

IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

* * * * * * *

No. 4137

PAULINE ANDRE DE LA METTRIE and GEORGE PRATT DE GASQUET JAMES, Appellants,

vs.

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, as Alien Property Custodian, and Frank White, as Treasurer of the United States,

and

No. 4138

DAVID KEANE, Receiver, Appellant,

vs.

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, as Alien Property Custodian, and Frank White, as Treasurer of the United States

MINUTE ENTRIES—Feb. 5 and 6, 1925

The argument in the above entitled causes was commenced by Mr. J. Noble Hayes, attorney for the appellant, and was continued by Mr. Frederick Geller, attorney for the appellee James, and by Mr. Dean H. Stanley, attorney for the appellees Alien Property Custodian and Treasurer of the United States.

* * * * * * *

[Title omitted]

The argument in the above entitled causes was continued by Mr. Dean H. Stanley, attorney for the appellees Alien Property Custodian and Treasurer of the United States, and was concluded by Mr. J. Noble Hayes, attorney for the appellants.

* * * * * * *

IN COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

[Title omitted]

Before Martin, Chief Justice, Robb and Van Orsdel, Associate Justices

Appeals from the Supreme Court of the District of Columbia

OPINION

Mr. Chief Justice MARTIN delivered the opinion of the Court:

The appellants Pauline Andre de la Mettrie and George de Gasquet James, as plaintiffs, brought suit in the lower court against the Alien Property Custodian, under section 9 of the Trading with the Enemy Act, as amended June 5, 1920, to enforce the collection of certain claims against the appellee Elizabeth Pratt de Gasquet James, from the property of the appellee then held by the custodian. An issue was made, and a decree was entered against the plaintiffs, from which they have appealed.

The plaintiffs, were citizens and resident of France. On March 21, 1915, they severally recovered judgments against the appellee Mrs. James in the Surrogate's Court of Ulster County, New York, in the sum of $69,754.85 each, and these yet remain wholly unpaid. On November 5, 1918, the Custodian determined that Mrs. James was an alien enemy under the Trading with the Enemy Act, and accordingly seized certain funds then held to her credit by the Farmers Loan and Trust Company of New York. On April 22, 1920, the plaintiffs filed their notices with the Custodian, followed by the applications on May 29, 1920, for the allowance of their respective claims payable from said funds. These were disallowed by the Custodian, whereupon on May 30, 1921 the plaintiffs brought this suit.

The suit was brought under the provisions of section 9 of the act, as amended June 5, 1920. (41 Stat. 977).

Subsection (a) of that enactment provides that any person not an enemy or ally of enemy to whom any debt may be owing from an enemy or ally of enemy, whose property or any part thereof shall have been seized by the Alien Property Custodian under the act and held by him or by the Treasurer of the United States, may institute a suit in equity in the Supreme Court of the District of Columbia, to establish the debt so claimed, and if so established the court shall order the payment to the claimant of the money or other property so held by the Custodian or the Treasurer of the United States.

Subsection (e) of section 9 provides that no money or other property shall be returned or any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United

States; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Custodian or Treasurer of the United States thereunder.

This court has held that subsection (e) is a limitation upon the general provisions of section 9. Banco Mexicano vs. Deutsche Bank et al. 53 App. D. C. 266, 289 Fed. 924, affirmed 263 U. S. 591. In view of this ruling we consider the present case to be governed by the provision of that subsection to the effect that no debt shall be allowed under section 9 to claimants other than citizens of the United States, unless it arose with reference to the money or other property held by the Custodian. It appears without dispute that the present claimants are not citizens of the United States, and a bare statement of the admitted facts in the case is sufficient to demonstrate that the debt or claim in suit did not arise with reference to the property held by the Custodian.

First, as to the debts or claims. It appears that Amedee De Gasquet James, the former husband of the appellee Mrs. James, and the father of the plaintiffs, died on July 28, 1903, in France, leaving property both in Europe and in the United States, and that the appellee became an executrix of his estate; that afterwards a proceeding for a settlement of her accounts as such executrix was begun in the Surrogate's Court of Ulster County, New York, and on March 21, 1915 the court entered certain judgments against the appellee and in favor of the appellants, each in the sum of $69,754.85, as and for the amounts found due them as distributees of the estate. These judgments were affirmed in the reduced sum of $65,133.25 each, and are the claims now sued upon in this case. It may be repeated that the judgments arose solely out of the settlement of the estate of the deceased husband of the appellee, and upon her accounts as executrix of the estate. See Matter of James, 172 App. Div. (N. Y.) 800; 221 N. Y. 242.

Next, as to the property in the hands of the Custodian. It appears that in the year 1887 (sixteen years before the death of her husband), the appellee Mrs. James entered into a trust agreement with The Farmers Loan and Trust Company of New York, whereby she paid over to that company the sum of about $135,000 in trust, reserving to herself an estate for life in the proceeds thereof, with remainder over to her four children. This was a voluntary trust created out of her own separate property. The property now held by the Custodian, which the appellants seek to reach, consists of interest payable to the appellee by the Farmers Loan and Trust Company, arising as proceeds from the said trust fund. These proceeds (not the principal of the fund), together with certain bonds appraised at $590, were seized and are now held by the Custodian, and have no relation whatever with the estate of the appellee's deceased husband, out of which the judgment claims of the appellants arose. These facts effectually negative the claims of the appellants in this case.

It appears that on June 18, 1923, about two years after this suit

was begun in the lower court, an order was entered by the Supreme Court of the State of New York in supplementary proceedings, appointing one David Keane as receiver of all the property, debts, equitable interests, and things in action, effects, and estate, real and personal, of the appellee Mrs. James; and that the receiver afterwards filed a motion for leave to intervene and file a petition in the case. A motion to the same effect was made by the appellants. The motions were denied by the lower court, and the receiver has appealed from that order. This ruling was correct, since the property now in question was already held by the Custodian under the Trading with the Enemy Act, and subsection (f) of section 9 of the Act provides that property so held shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court.

Other questions have been raised and argued by counsel upon the record, but they need not be considered now, since the considerations above stated are absolutely conclusive of the case.

The decrees of the lower court are affirmed with costs.

IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

No. 4137

[Title omitted]

Appeal from the Supreme Court of the District of Columbia

JUDGMENT

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued by counsel. On consideration whereof, It is now here ordered, adjudged, and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. Chief Justice Martin, March 2, 1925.

* * * * * * *

IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

No. 4138

[Title omitted]

Appeal from the Supreme Court of the District of Columbia

JUDGMENT—March 2, 1925

This cause came on to be heard on the transcript of the record from the Supreme Court of the District of Columbia, and was argued

by counsel. On consideration whereof, It is now here ordered, adjudged, and decreed by this Court that the decree of the said Supreme Court in this cause be, and the same is hereby, affirmed with costs.

Per Mr. Chief Justice Martin, March 2, 1925.

* * * * * * *

IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

No. 4137

[Title omitted]

PETITION FOR APPEAL—Filed March 17, 1925

To the Court of Appeals of the District of Columbia:

Now come your petitioners Pauline Andre de la Mettrie and George Pratt de Gasquet James, appellants in the above entitled cause and show unto the Court that on the 2nd day of March, 1925, a decision was rendered and a decree entered against them herein, in which decision and decree to their damage and prejudice certain errors were committed as will appear from the assignment of errors filed herewith.

Your petitioners further show that the decree of the Court of Appeals herein is subject to review by the Supreme Court of the United States under the provisions of paragraph five of Section 250 of the Judicial Code, in that it is a case in which the validity of authority exercised under the United States or the existence or scope of power or duty of an officer of the United States is drawn in question.

Wherefore, your petitioners pray the allowance of an appeal to the Supreme Court of the United States for the correction of the errors complained of and that a transcript of the record, proceedings and papers in this cause duly authenticated may be sent to the said Supreme Court of the United States and that bond be fixed herein in the penalty of Three hundred dollars ($300.00) to act as a supersedeas, or a cash deposit of Three hundred dollars ($300) be permitted in lieu thereof, no funds involved herein being now in the possession of the plaintiffs, appellants, so as to require that they be protected by bond.

They further pray that the mandate on the aforesaid decree of March 2, 1925, herein, be stayed until the further order of this Court.

Pauline Andre de la Mettrie, George Pratt de Gasquet James,
by J. Noble Hayes, Guy H. Johnson, Attorneys for Petitioners.

IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

No. 4137

[Title omitted]

ASSIGNMENT OF ERROR—Filed March 17, 1925

The plaintiffs-appellants made the following Assignment of Error to the final decree of the Court of Appeals of the District of Columbia made and entered herein on the — day of March, 1925.

1. The Court of Appeals erred in affirming the decree of the Trial Court in holding that the plaintiffs' claim to recover the amount of the judgments with interest out of sequestered property of defendant, Elizabeth Pratt de Gasquet James, judgment-debtor, and for other relief, do not arise with reference to the said sequestered money or property in the hands or under the control of the Alien Property Custodian and the Treasurer of the United States, within the meaning of the Trading with the Enemy Act as amended June 5, 1920.

2. The Court of Appeals erred in affirming the decree of the Trial Court in holding in effect that to entitle the plaintiffs to any of the relief prayed for it should have been shown, but was not shown, that there was a specific lien upon the money or property, such as a vendor's lien, a lien created by pledge or mortgage, either specific or equitable, or by statute, to bring the case within the provisions of the Trading with the Enemy Act, Section 9 (e) as amended by the law of June 5, 1920.

3. The Court of Appeals erred in holding in effect with the Trial Court that the rights of the plaintiffs as judgment creditors of the judgment-debtor Elizabeth Pratt de Gasquet James under the laws of the State of New York upon the facts alleged in the Bill of Complaint, to collect their judgment out of the assets of the judgment-debtor in the State of New York, and to prevent the removal of these assets by her from said State to prevent the collection of their said judgments out of such property were not remedies which gave such security for the said judgment as attached to the property in the hands of the Alien Property Custodian, so that within the meaning of the Trading with the Enemy Act, the debt or claim arose with reference to the money or property held by the Custodian.

4. The Court of Appeals erred in holding that the application made upon the petition of the Receiver of the New York Supreme Court, David Keane, to intervene as the successor in interest to the rights of the judgment-debtor, defendant, Elizabeth Pratt de Gasquet James, to all of the funds in the hands of the Custodian and Treasurer and on motion of the plaintiffs to join him as a defendant in the action were properly overruled as a matter of Law upon the ground that (sub-section f) Section 9 of the Act as amended June 5,

1920 provides that property so held shall not be liable to lien, garnishment, trustee process, or execution, or subject to any order or decree in any Court and thus holding that the remedy of an equity suit provided by Section 9 of the Act as amended June 5, 1920, was not available to the Receiver as the successor in interest of the rights of the judgment-debtor-defendant, or otherwise, upon his own motion or that of the plaintiffs.

5. That the Court of Appeals erred in refusing to consider all the other questions raised on the appeal from the final decree and final order of the Supreme Court of the District of Columbia filed December 5th, 1923 including the following: (a); Error assigned to the Trial Court ruling that there was no reason why the case should not be decided without giving any consideration to the Order previously made in the action overruling the demur-er of the defendants, custodian, and treasurer: (b); In holding that as a fact while a citizen of an allied or neutral power has exactly the same rights in the French Courts as a Frenchman has, to that extent, there is reciprocity, such as is required by the Trading with the Enemy Act Section 9, subdivision "(e)", but that there isn't any reciprocity as to the particular thing under consideration in the instant case, and there was, therefore, no jurisdiction in the Supreme Court of the District of Columbia to decree the relief prayed for as to either of the plaintiffs, and in effect holding that the Government of France did not extend full reciprocal rights to American citizens in the Courts of the French Republic to those granted to French citizens in the courts of the United States, in respect to claims against sequestered property in the hands of such Government by the Trading with the Enemy Act: (c): In excluding the certified copy of a communication received by the State Department and under the signature and seal of the Secretary of State from the French Government through the French Embassy at Washington, dated 11th day of December, 1922, with a translation by the State Department (plaintiff Exhibit 11 for identification): (d); In denying a motion to amend the Bill of Complaint for the purpose of adding the said David Keane, receiver, under the order of the Supreme Court of the State of New York, as a co-defendant herein: (e); In excluding without examination by the court, or allowing the same to be marked, and refusing to allow them even to be offered in evidence, the documents produced in court by the Attorney General under stipulation with plaintiff's counsel, in lieu of the service of a subpœna duces tecum as follows: (a′) the claim filed by the defendant James with the custodian on or about December 24, 1920; (b′) all papers produced in court from the files of the Custodian's and Attorney General's offices under the stipulation, and contained in a bundle; (c′) all copies of letters addressed and sent to the Alien Property Custodian or Treasurer of the United States relating to these claims filed by the defendant James, which were produced in court under stipulation with him: (f); In refusing to allow the Assistant Attorney General, who produced the above mentioned papers in court, and had them in his possession, to be sworn as a

witness when called by the plaintiffs' counsel to the stand: (g); In excluding Section 1172 of the penal law of the State of New York offered by the plaintiffs in evidence: (h); In excluding Sections 2554, 2553, and 2458 of the Code of Civil Procedure of the State of New York offered by the plaintiffs in evidence: (i); In including Sections 2432, 2435, 2437 and 2441 of the Code of Civil Procedure of the State of New York: (j); In excluding Sections 1871-1879 of the Code of Civil Procedure of the State of New York relating to judgment-creditors' action : (k); in excluding Sections 550, 551 and 552 of the Code of Civil Procedure of the State of New York referring to arrest in civil cases: (1); In excluding the certified copy of the judgment of the U. S. District Court of the Eastern District of New York in the case of Charles S. Aronstam vs. Elizabeth Pratt de Gasquet James, the Alien Property Custodian and Treasurer of the United States. (Plffs.) Exhibit 13 for identification. (m); In excluding the account of the defendant James, filed in the Surrogate's Court of Ulster County, New York, on April 17, 1913, which is the basis of the plaintiffs' judgment upon which this present claim in this suit is based: (n); In refusing to allow plaintiffs' exhibit 12, a statement of the property in the hands of the Custodian on January 3, 1921, income, and "Amount to be returned" previously produced by the Attorney General offered in evidence by the plaintiffs, received and marked "Exhibit 12, J. B. C." And in refusing to allow the Assistant Attorney General, who produced the same, to be examined under oath in court as to the same.

6. That the Court of Appeals erred in holding in effect that the plaintiffs-appellants had not set forth facts sufficient to entitle them to the equitable relief under Section 9 of the Trading with the Enemy Act, as prayed for, or otherwise.

7. That the Court of Appeals erred in affirming the final decree of the District of Columbia, and the final order dismissing the petition of the Receiver dated December 17th, 1923, with costs.

8. That the Court of Appeals erred in entering the final decree filed December 17th, 1923, affirming the decree of the Supreme Court of the District of Columbia, with costs, and the final order denying the petition of the Receiver of the New York Supreme Court to intervene in the action.

Dated Washington, March, 14, 1925.

J. Noble Hayes, Guy H. Johnson Attorneys for Appellants.

IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

No. 4137

[Title omitted]

NOTICE OF APPEAL—Filed March 17, 1925

Dean Hill Stanley, Esq., Special Assistant to the Attorney General, Attorney for Appellees; Thomas W. Miller, Alien Property Custodian, and Frank White, Treasurer of the United States: Frank Davis, Jr., Esq., S. M. Stellwagen, Esq., Attorneys for Appellee Elizabeth Pratt de Gasquet James:

Attached hereto please find copies of petition of appellants for appeal to the Supreme Court of the United States from the decision of the Court of Appeals of the District of Columbia and Assignment of Errors.

J. Noble Hayes, Guy H. Johnson, Attorneys for Appellants.

Receipt acknowledged of the foregoing notice and copies of petition for appeal and assignment of errors this 17 day of March, 1925.

Frank Davis, Jr., S. M. Stellwagen, Attorneys for Appellee, Elizabeth Pratt de Gasquet James; Dean Hill Stanley, Atty. for Defendants, Miller & White.

[File endorsement omitted.]

IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

No. 4138

[Title omitted]

PETITION FOR APPEAL—Filed March 17, 1925

To the Court of Appeals of the District of Columbia:

Now comes your petitioner David Keane, Receiver, appellant in the above entitled cause and shows unto the Court that on the 2nd day of March, 1925, a decision was rendered and a decree entered against him herein, in which decision and decree to his damage and prejudice certain errors were committed as will appear from the assignment of errors filed herewith.

Your petitioner further shows that the decree of the Court of Appeals herein is subject to review by the Supreme Court of the United States under the provisions of paragraph five of Section 250 of the Judicial Code, in that it is a case in which the validity of

authority exercised under the United States or the existence or scope of power or duty of an officer of the United States is drawn in question.

Wherefore, your petitioner prays the allowance of an appeal to the Supreme Court of the United States for the correction of the errors complained of and that a transcript of the record proceedings and papers in this cause duly authenticated may be sent to the said Supreme Court of the United States and that bond be fixed herein in the penalty of Three hundred dollars ($300.00) to act as a supersedeas, or a cash deposit of Three hundred dollars ($300.00) be permitted in lieu thereof, no funds involved herein being now in the possession of the plaintiff, appellant, so as to require that he be protected by bond.

He further prays that the mandate on the aforesaid decree of March 2, 1925, herein, be stayed until the further order of this Court.

David Keane, Receiver, &c., by J. Noble Hayes, Guy H. Johnson, Attorneys for Petitioner.

IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

No. 4138

[Title omitted]

ASSIGNMENT OF ERROR—Filed March 17, 1925

The Petitioner-Appellant herein, David Keane, Receiver, in supplementary Proceedings of all the property equitable interests and choses in action of the defendant, Elizabeth Pratt de Gasquet James, a judgment debtor appointed by the Supreme Court of the State of New York makes the following Assignment of Error to the decision and the decree of the Court of Appeals of the District of Columbia made on March 2nd 1925, appealed from:

1. The Court of Appeals erred in affirming the final Order of the Supreme Court of the District of Columbia filed December 17th, 1923, denying the Petition of David Keane, Receiver, as successor in interest of the property of the judgment debtor, Elizabeth Pratt de Gasquet James, in the hands of the custodian and Treasurer of the United States:

(a) As a matter of right;
(b) As a matter of discretions.

2. The Court of Appeals erred in holding, in affirming the said Order, that, "since the property in question was already held by the Custodian under the Trading with the Enemy Act and subsection (f) of Section 9 of the Act provides that property so held shall not be liable to lien, attachment, garnishment, trustee process, or

execution, or subject to any Order or Decree of any Court", his application was properly denied and construing the Act as Amended June 5th, 1920, to mean, and holding, that the remedy of an equity suit provided by Section 9 of the Amended Act was not available to the Receiver as the successor in interest of all the right, title, claim or interest of the Defendant-Judgment-Debtor James, in the property in question in the hands of the Custodian and Treasurer of the United States, and that he was stayed by sub-section (f) from intervening in said equity suit upon his own motion, or otherwise.

3. That the Court of Appeals erred in holding that the Receiver had not set forth in his petition facts sufficient to entitling him to intervene in the action.

4. That the Court of Appeals erred in making and entering an Order affirming the Final Order of the Supreme Court of the District of Columbia denying the petition of the Receiver for leave to intervene, dated December 17th, 1923.

J. Noble Hayes, Guy H. Johnson, Attorneys for Appellants.

IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

No. 4138

[Title omitted]

NOTICE OF APPEAL—Filed March 17, 1925

Dean Hill Stanley, Esq., Special Assistant to the Attorney General, Attorney for Appellees; Thomas W. Miller, Alien Property Custodian, and Frank White, Treasurer of the United States; Frank Davis, Jr., Esq., S. M. Stellwagen, Esq., Attorneys for Appellee Elizabeth Pratt de Gasquet James:

Attached hereto please find copies of petition of appellant for appeal to the Supreme Court of the United States from the decision of the Court of Appeals of the District of Columbia and Assignment of Errors.

J. Noble Hayes, Guy H. Johnson, Attorneys for Appellant.

Receipt acknowledged of the foregoing notice and copies of petition for appeal and assignment of errors this 17th day of March, 1925.

Frank Davis, Jr., S. M. Stellwagen, Attorneys for Appellee Elizabeth Pratt de Gasquet James; Dean Hill Stanley, Atty. for Defendants Miller & White.

[File endorsement omitted.]

IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

No. 4137

[Title omitted]

ORDER ALLOWING APPEAL—March 21, 1925

On consideration of the petition for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause, It is ordered by the Court that said appeal be, and the same is hereby, granted, and the bond to act as supersedeas is fixed at the sum of three hundred dollars, with leave to make a cash deposit in lieu thereof.

* * * * * * *

Memorandum

March 26, 1925.—Three hundred dollars deposited with the Clerk of the Court of Appeals, D. C., in lieu of bond.

IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

No. 4138

[Title omitted]

ORDER ALLOWING APPEAL—March 21, 1925

On consideration of the petition for the allowance of an appeal to the Supreme Court of the United States in the above entitled cause, It is ordered by the Court that said appeal be, and the same is hereby, granted, and the bond to act as supersedeas is fixed at the sum of three hundred dollars, with leave to make a cash deposit in lieu thereof.

* * * * * * *

Memorandum

March 26, 1925.—Three hundred dollars deposited with the Clerk of the Court of Appeals, D. C., in lieu of bond.

No. 4137

CITATION—In usual form, showing service on Dean Hill Stanley; filed March 26, 1925; omitted in printing

No. 4138

CITATION—In usual form, showing service on Dean Hill Stanley; filed March 26, 1925; omitted in printing

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IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

No. 4137

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed March 26, 1925

The Clerk will please prepare a transcript of record on appeal to the Supreme Court of the United States in the above entitled cause and include therein the following:

1. The printed record in the Court of Appeals.
2. Minute entry as to argument of the case.
3. The opinion.
4. The decree.
5. Petition for allowance of appeal.
6. Assignment of errors.
7. Order allowing appeal.
8. Minute entry of deposit in lieu of bond.
9. Citation.
10. This designation.

Pauline Andre de la Mettrie, George Pratt de Gasquet James, by J. Noble Hayes, Guy H. Johnson, Attorneys for Appellants.

Service acknowledged this 25 day of March, 1925.
Wm. J. Neale, of Counsel for E. P. de G. James. Dean Hill Stanley, Atty. for Miller & White.

[File endorsement omitted.]

IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

No. 4138

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed March 26, 1925

The Clerk will please prepare a transcript of record on appeal to the Supreme Court of the United States in the above entitled cause and include therein the following:

1. The printed record in the Court of Appeals.
2. Minute entry as to argument of the case.
3. The opinion.
4. The decree.
5. Petition for allowance of appeal.
6. Assignment of errors.
7. Order allowing appeal.
8. Minute entry of deposit in lieu of bond.
9. Citation.
10. This designation.

David Keane, Receiver, &c., by J. Noble Hayes, Guy H. Johnson, Attorneys for Appellant.

Service acknowledged this 25 day of March, 1925.
Wm. J. Neale, of Counsel for E. P. de G. James. Dean Hill Stanley, Atty. for Miller & White.

[File endorsement omitted.]

IN COURT OF APPEALS OF DISTRICT OF COLUMBIA

CLERK'S CERTIFICATE

I, Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and typewritten pages numbered from 1 to 175, inclusive, constitute a true copy of the transcript of record and proceedings of said Court of Appeals in the cases of Pauline Andre De La Mettrie and George Pratt De Gasquet James, Appellants, vs. Elizabeth Pratt De Gasquet James, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, and David Keane, Receiver, Appellant, vs. Elizabeth Pratt De Gasquet James, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States, Nos. 4137 and 4138, January Term, 1925, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court of Appeals, at the City of Washington, this 26th day of March, A. D. 1925.

Henry W. Hodges, Clerk of the Court of Appeals of the District of Columbia. (Seal Court of Appeals, District of Columbia.)

Endorsed on cover: File Nos. 31,009, 31,010. District of Columbia Court of Appeals. Term No. 346. Pauline Andre De La Mettrie and George Pratt De Gasquet James, appellants, vs. Elizabeth Pratt De Gasquet James, Thomas W. Miller, as Alien Property Custodian, et al. Term No. 347. David Keane, receiver, appellant, vs. Elizabeth Pratt De Gasquet James, Thomas W. Miller, as Alien Property Custodian, et al. Filed April 7th, 1925. File Nos. 31,009, 31,010.

Office Supreme Court, U. S.
FILED
APR 9 1926
WM. R. STANSBURY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1925.

Nos. 3[redacted]54 55

PAULINE ANDREE DE LA METTRIE and GEORGE PRATT DE GASQUET JAMES,

Appellants,

against

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, as Alien Property Custodian, et al.,

Appellees,

and

DAVID KEANE, Receiver,

Appellant,

against

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, as Alien Property Custodian, et al.,

Appellees.

BRIEF ON BEHALF OF THE APPELLANTS (on both appeals).

J. NOBLE HAYES,
GUY H. JOHNSON,
Attorneys for Appellants.

PRESS OF FREMONT PAYNE, 80 Washington Street, New York City.

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Supreme Court of the United States

October Term, 1925.

PAULINE ANDREE DE LA METTRIE and GEORGE PRATT DE GASQUET JAMES, Appellants, against ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, as Alien Property Custodian, et al., Appellees,	No. 346.
and	
DAVID KEANE, Receiver, Appellant, against ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, as Alien Property Custodian, et al., Appellees.	No. 347.

BRIEF ON BEHALF OF THE APPELLANTS (on both appeals).

Statement.

There are two separate but related appeals here from judgments of the Court of Appeals of the District of Columbia, affirming decrees of the Supreme Court of the District. *One No. 346* decided March 2nd, 1925 (Record,

pp. 147-145-146, 55 App. D. C., 352), dismissing a suit brought under Sec. 9 (a) of the Trading with the Enemy Act of Congress (41 Stat., l. 977) by Pauline Andree de la Mettrie and George Pratt de Gasquet James, judgment-creditors, plaintiffs, against Elizabeth Pratt de Gasquet James, an insolvent judgment-debtor; and the Alien Property Custodian, and the Treasurer of the United States, defendants (hereafter referred to as the de la Mettrie suit): And the other *No. 347,* a decree made in the court of this District, decided March 2nd, 1925 (Record, pp. 147-148, 55 App. D. C., 354), in a proceeding begun by petition of David Keane, Receiver, denying the application and dismissing the proceedings, with costs (Record, p. 147), appointed by the New York Supreme Court, of the property of Elizabeth Pratt de Gasquet James, against the same defendants, for leave to intervene in the de la Mettrie suit.

Thomas W. Miller, the Alien Property Custodian at the time the suits were commenced was succeeded by Frederick C. Hicks, who was succeeded in turn by the present Custodian Howard Southerland, who has been regularly substituted as appellee herein by order of the court.

The appeals are here under Section 250 sub-divisions Fifth and Sixth of the Judicial Code, they being cases in which (1) the jurisdiction of the trial court was in issue (2) the validity and authority exercised by the Custodian under the Trading with the Enemy Act, and the existence or scope, or power, or duty so exercised in the premises is drawn into question (3) as being cases in which the construction of Section 9 of the Trading with the Enemy Act is drawn into question by the defendants (Assignments of Error, Record, pp. 149-151 and 153-154). The appeals were taken before the amendment of the Judicial Code by (Public, No. 415-68, Congress) approved February 13th, 1925 which went into effect three months later May 14th, 1925. The appeals were allowed March 21st, 1925 (Record, p. 155).

Jurisdiction was entered and on a similar appeal as matter of right by this court in the Banco Mexicano v. The Deutsch Bank and the Alien Property Custodian (263 U. S., 591).

The suit, which is in equity, was commenced in May, 1921 by the plaintiffs as judgment-creditors, against Elizabeth Pratt de Gasquet James, judgment-debtor, and the Alien Property Custodian, and Treasurer of the United States, to apply certain property of the judgment-debtor (acquired from her father), which had been sequestered by the Custodian in the hands of the Farmers' Loan & Trust Company in the City of New York, on May 29th, 1918, to the satisfaction of a judgment of the Surrogate's Court of Ulster County, New York, rendered in favor of the plaintiffs against the defendant James in March, 1915, and reentered in on November 3rd, 1917 upon its affirmance on appeal by the New York Court of Appeals, which court retained jurisdiction of the case at the time of the capture, for the purpose of enforcing its decree by order and execution, and in the absence of the judgment-debtor from America.

The judgment-debtor, Madam de Gasquet James (an American woman born in the United States of American parents) had in 1912 married the Duc de Mecklenburg, Schwerin, a German citizen and cousin of the then German Emperor.

On May 29th, 1918, her property and interests in question (which was part of her separate estate at the time of her marriage) in the hands of the Farmers' Loan & Trust Company in New York, consisting of securities, a life estate in the income of a self-created trust of $135,000, and a large amount of accrued income, were sequested as enemy property, and removed from the state and from the reach of the process of the New York courts; the income of the trust continuing to be collected by the trustee for the account of the custodian down to the present time.

The judgment-debtor James had made application on December 24th, 1920, and filed her claim with the Custodian for the return of the sequestered property to herself (Stipulation 13, Record, p. 72) under the provision of the amendment of the Act of June 5, 1920, Sec. 9 (b) 31-8 *which permitted the return of sequestered property, to* * * *

> "(3) A woman who at the time of her marriage "was a citizen of the United States, said citizenship "having been acquired by birth in the United States "and who prior to April 6th, 1917 intermarried with "a subject or citizen of Germany or Austria-Hungary, "and that the money or other property concerned was "not acquired by such woman either directly or in- "directly from any subject or citizen of Germany or "Austria-Hungary."

The sequestration was about to be lifted, and the property, consisting of securities and accumulated income then amounting on January 1st, 1921 to $21,600 (see Record, p. 141) and now amounting to upwards of $55,000, was about to be turned over to the judgment-debtor as alleged, beyond the State of New York in avoidance of her judgment-creditors, by the Custodian—shortly before the commencement of the present suit, which stayed the prospective delivery.

> Record, page 42, folio 74—Note typographical error May 26th, "1922" should be *1921* (not denied) and stipulation 13, Record, page 72.

Preliminary to the trial, a motion was made by the defendants for judgment dismissing the complaint for want of jurisdiction in the court, of the subject matter of the suit, which was denied after hearing by Judge Hoehling on October 20th, 1921, with leave to defendants to answer (Record, p. 13). This order was never appealed from.

The defendant, Madam James defended the suit upon the grounds:

1st. That the plaintiffs being French citizens, the court had no jurisdiction of the action, for the reason, that being such, it was essential, that the Trading with the Enemy Act, Section 9 (e) as amended, June 5th, 1920, that their claim must arise *"with reference"* to the sequested property; which, the trial court and the Court of Appeals, construing the Act, *held* it did not, Record (Answer, p. 15, fol. 26). The section is as follows:

> "Section 9 (e) No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecutions of the War, unless such nation in like cases extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section unless it was owing to and vowed by the claimant prior to October 6th, 1917, and as to claimants other than the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States."

The Custodian and Treasurer defended upon the grounds:

That the Supreme Court of the District was without jurisdiction of the subject matter of the suit, because:

(1) The debt sought to be recovered by the plaintiffs was neither owing nor owned by the plaintiffs prior to October 6, 1917, and

(2) The plaintiffs were not citizens of the United States and the debt which they are seeking to recover did not

arise "with reference" to the money or other property held by the Alien Property Custodian or the Treasurer as required by Section 9 (e) of the Trading with the Enemy Act (Answer of Custodian, Record, p. 12, fol. 19).

The Government's first ground of objection, to the jurisdiction of the District Court that the claim did not arise prior to October 6th, 1917, was apparently abandoned at the trial, for it was made clearly to appear that the judgment of the Surrogate's Court of Ulster County, N. Y., was made and entered March 21st, 1915; and that the subsequent judgment of November 3rd, 1917, was entered anew on an affirmance of the original drawn of 1915 by the Court of Appeals, with an unimportant modification (Plaintiffs' Exhibits III and IV, Record, pp. 59-60).

The Government, however, insisted upon its two other defenses:

(1) That France had not accorded reciprocal right to American citizens, which under the Act, it claimed, was necessary to give jurisdiction; and (2) that the claim did *not* arise "*with reference*" to the sequestered property, as that phrase was used in Sec. 9 (e) of the Act.

As to the want of jurisdiction resulting from the alleged failure of the French Government to accord reciprocal right, a preliminary question of fact arose and was tried as determinative of the jurisdiction, on this issue:

> First National Bank v. Chicago T. & T. Co., 198 U. S., 389;
> Bordes v. The Bank, 178 U. S., 524.

It resulted in the courts excluding, under exception, on the objection of the government, the evidence of the accord of reciprocal rights by the French Government, in an official communication to the American Secretary of State from the French Government, transmitted through the French Embassy of Dec. 11th, 1922.

See communication French Ambassador (Plaintiffs' Ex. XI for Identification, Record, pp. 62-63, Ruling of the Court, p. 62, fol. 13 and pp. 136-137).

But, as will subsequently appear, this communication afterwards became incorporated in the evidence in the deposition of defendants' expert witness Pierre le Paulle, and this particular defense sank into desuetude; and the case was decided by the Court of Appeals on the ground that the plaintiffs' claim did not arise "*with reference*" to the sequested property in the hands of the Custodian and Treasurer, on the authority of the Banco Mexicano case (53 App. D. C., 266; affd. 263 U. S., 591) (Opinion, Record, p. 146).

The Receiver's Intervention.

During the progress of the suit the New York Supreme Court on June 18th, 1923 appointed David Keane, Esq., Receiver of the property and equitable interests of the defendant James, and directed him to apply to the Supreme Court of the District of Columbia to intervene in the pende lite de la Mettrie suit (Record, pp. 36-43).

The Receiver's position was entirely different from that of the plaintiffs, in the important respect that he being an American citizen, and an officer of an American court, did not come within the provisions of such Section (e) of Section 9; and was not therefore required to show that his claim arose before October, 1917; and arose with reference to the sequestered property; and that France had accorded reciprocal right to the American citizens, which applied to French citizens and alien allies in their position, but not to American citizens; and the technical objections which both the defendants relied upon in defending this suit would be avoided, by the Receiver's intervention.

The Receiver's application made upon petition to the District Court, during the progress of the trial for leave to intervene, was denied by the trial court of its own motion, without other reason given therein is to be found in the following language:

> "I shall deny the motion for leave to intervene and you may have an exception" (p. 64, fol. 114).

A motion was at the same time made by the plaintiffs on their own behalf, to have the Receiver as successor in interest to the judgment-debtor James, brought in and made a party to the suit, which was denied and exception allowed (Record, p. 64).

The Court of Appeals sustained the final order of denial upon the express ground, of its construction of sub section (f) of Section 9 of the Act (Opinion, Record, p. 147; Judgment of Affirmance, p. 147) *holding* that sub-section (f) precluded the New York Receiver from any intervention in the matter, even in the equity suit, provided by Section 9 (a) of the Act; and that such an intervention would be in derogation of the provisions of sub-section (f), which is as follows:

> "Section 9 (f). Except as herein provided, the money or other property conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court."

Several other questions of importance upon exceptions to the exclusion of evidence bearing upon the main issues, as appears by appellants' assignment of error hereafter to be noticed.

The Appellants' Contentions.

The appellants in (No. 346) contend:

(1) That it is important to consider the first instance, this is *not* in effect a suit against the United States affecting its title to sequestered property, the disposition of which Congress has not determined upon as yet, as in the Banco Mexicano case (263 U. S., 591) from which it is distinguishable in this respect, but is in fact, a suit under the Act, in the nature of a creditor's bill against the real defendant in interest, Elizabeth Pratt de Gasquet James, a judgment-debtor, to determine who shall be entitled to this property on its release, *whether* the absentee judgment-debtor, who is striving to elude her judgment-creditors by having the sequestered property released and turned over to her or her agents, outside the State of New York and beyond the reach of the process of the court which rendered this judgment against her, and retained jurisdiction to enforce it against all her property in this State; and whose laws forbid its removal by her for the purpose of evading her creditors? Or the plaintiffs, by the direct award of the court? Or the New York Receiver of the debtors' property? Or the Farmers Loan & Trust Co. in the City of New York from which the *possession* was wrested, as a precautionary war measure, eight years ago?

The appellants contend that their claims to this property (the Government appropriation of which Congress has disclaimed, and provided for its release) and of the right to have it applied to their judgments, or turned over to the Receiver. Or restored to the Trust Company in the jurisdiction in which it was captured, and the *status quo anti sequestration* restored; and thus prevent its delivery to the judgment-debtor in fraud of her creditors, *does constitute a claim* "with reference" to this *particular*

sequestered property, upon any broad and reasonable construction of the Act.

(2) That if it is not conceded as fully proven—*which the appellants contend it was*—that the Government of France accorded full reciprocal rights to American citizens, so as to give the court of the district jurisdiction of the cause, that the failure to establish such jurisdictional fact was due to the wrongful exclusion on the Government's objection, of the official communication of the French Government of December 11th, 1922 to the American Secretary of State (Plaintiffs' Exhibit XI, recd. pp. 62-63; Finding and Ruling, pp. 136-137; Memorandum, p. 143, fol. 243); as well as to give proper effect to the uncontradicted evidence of the expert witnesses called by the Government and the plaintiffs, as more fully specified in Appellants' Assignment of Errors (5).

(3) That the plaintiffs' motion at the trial to bring in David Keane, Receiver of the property and equitable interest of the judgment-debtor, James, appointed by the New York Supreme Court, subsequent to the commencement of the suit, and as successor to the said defendants' interests in the sequestered property, was improperly denied as (Record, p. 64).

(4) That other evidence bearing upon the main issues of jurisdiction and the powers of the custodian under the Act were improperly excluded as more particularly appears in Appellants' Assignment of Errors.

In (No. 347) the Receiver contends that the courts below improperly denied his petition to intervene in the suit as the successor in interest of the defendant judgment-debtor James, upon the ground that he was excluded from intervention in the suit by the provision of Section 9 (f) of the Act, and that the said provision was improp-

erly construed by the trial court, and the Court of Appeals of the District. And that the protection thrown around the *possession* of sequestered property in the hands of the Custodian and Treasurer by sub-division (f) of Section 9 is from proceedings other than those authorized by the Act, and is intended to relegate claimants to the remedy of suit in equity as provided in Section 9 (a), and has no other purpose. (Fisher v. Palmer, D. C., 259; 259 Fed., 355, citing Haycroft v. U. S., 39 U. S., 81; Wells v. Roper, 246 U. S., 336.) And that the Receiver standing in the shoes of the judgment-debtor James, respecting the reclamation of her sequestered property from the Custodian, for which she had made application December 24th, 1920, was not in respect of his application to intervene in the suit, within the prohibitions of the sub-section; and that the affirmance of the decree denying his petition to intervene by the Court of Appeals of the District was error.

Upon Both Appeals.

The case presents the larger, and most important question which is— Can the Trading with the Enemy Act be so construed as to create a means, in the form of law, by which an insolvent absentee judgment-debtor, whose property has been sequestered and rendered *immune* from process if the courts of state which rendered the judgment, and where the property was located at the time of the capture, can procure its release and delivery to the debtor in another jurisdiction, and thus elude her judgment-creditors and the Receiver of her property, through the instrumentality, and under the protection of the Act, without recourse by the aggrieved parties to the courts of justice, and particularly the court of equity designated by Section 9 (a) of the Act; and with entire impunity from judicial restraint. And if so does it constitute due process of law within the meaning of the Constitution?

The construction of the Act upon which the courts below renounced jurisdiction of the cause, and dismissed the complaint, left the appellants without any remedy for the Act took from them the right to seek relief in any other court; and made the rejection of the claim, and the allowance of the defendant judgment-debtor's claim to restitution absolute.

The protection of the creditors from the fraudulent removal of property by debtors in avoidance of judgments is provided for by the New York Code of Civil Procedure as follows:

> "SECTION 1171: A person who with intent to defraud a creditor, or prevent any of his property being made liable for the payment of his debts, or levied upon by execution or warrant, removes any of his property or secretes, assigns, conveys or otherwise disposes of the same; or with intent to defraud a creditor * * * removes * * * any of his books * * * is guilty of a misdemeanor.
>
> SECTION 27: *All principals in misdemeanors.* A person who commits or participates in an act, which would make him an accessory if the crime committed were a felony, is a principal and may be indicted and punished as such, if the crime be a misdemeanor.
>
> SECTION 26: *Principal and Accessory.* A party to a crime is, either
>
> 1. A principal; or
>
> 2. An accessory.
>
> SECTION 2: *Principal.* A person concerned in the commission of a crime whether he directly commits the act constituting the offense or aids and abets its commission, and whether present or absent, and a person who directly or indirectly counsels, commands, induces or procures another to commit a crime is a principal.

SECTION 1936: *Punishment of an Accessory to a Misdemeanor.* When an act or omission is declared by statute to be a misdemeanor and no punishment for aiding or abetting in the doing thereof is expressly prescribed, every person who, aids or abets another in such act or omission is guilty of a misdemeanor."

Such are the comprehensive provisions of the New York Penal Law which seek to prevent the fraudulent removal of property by a debtor from the reach of creditors.

The removal of the property in the present case, in the first instance, was, to be sure, *involuntary,* so far as the debtor was concerned, and accomplished under sanction of an over-reaching and dominant war measure *force majeur.* And it may be conceded that the delivery of the property or so much of it as is now actually in Washington to the judgment-debtor (who has not been in America for 13 years), out of the State of New York, would not constitute a crime committed within the State under these Sections of the Penal Code—all of which would seem to point to the reasonableness of that construction of the Trading with the Enemy Act, which would give to the court designated by Section 9 (a) power to prevent such an unforeseen travesty upon justice, as would result from denying this court the power to recognize the New York Receiver, if not the plaintiffs, and require the property of the judgment-debtor to be handed over to him, and brought again under the jurisdiction of the New York courts, and the property secured to this creditor—for if the complaint stands dismissed the property will be turned over to the judgment-debtor under the allowance of her claim, alleged and not denied, to have been already granted and the laws of the State of New York successfully evaded.

It may be noticed that the Custodian was fully advised of the claims of the creditors and the Receivers. And that it was admitted that the judgment-debtor had filed her claim for restitution of the property under the amend-

ment of June 5, 1920, as early as Dec. 24, 1920. And that it was alleged, and although not formally denied sought to be proven, that her claim had been allowed by the Custodian and was about to be turned over to her when the present suit was commenced staying the Custodian (Record, p. 39). And that when plaintiffs attempted to prove this fact by the records of the Custodian and Attorney-General in court, that the Assistant Attorney General vigorously opposed the same, and refused to testify as to the payees in his possession; and the proof offered was excluded by the court on the ground of *privilege* (Record, pp. 64 to 68).

So that the purpose of the Custodian to turn the property over to the judgment-debtor seems not to be left in doubt. This phase of the case is noticed later.

The case is of more than individual interest, and has an international importance, as affecting the friendly and reciprocal relations of the American and French Governments in adjusting the rights of these citizens in property sequestered by the respective Goverments. The matter of the recognition of the claims of Countess Pauline Andree de la Mettrie and George Pratt de Gasquet James, has been the subject of quite extensive diplomatic correspondence culminating in the communication of Dec. 11th, 1922 by the French Government, to the American Secretary of State, through Ambassador Jusserand (Record, pp. 62-63); and has a distinct and practical bearing upon the claims of American citizens prosecuting claims to sequestered property in France.

The main issues involved in the two appeals to which the other questions presented, are subsidiary, then, are:

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(1) In defining the issues—is the suit, *in effect* one against the Government of the United States, which it is the duty of the Custodian and Treasurer to defend as they

are doing, in the supposed interests of the Government; or is it rather, in substance and effect, against the judgment-debtor, James as the real defendant in interest; since Congress has declared its purpose to restore the sequestered property of American women in her situation? And is not the proper and legal attitude of the Custodian in the suit that of a mere Custodian of the property, or that of a disinterested stakeholder?

(2) Has the French Government accorded reciprocal right to American citizens as shown by the evidence offered in this suit—if that question be still regarded as in the case since the decision of the Court of Appeals?

(3) Do the plaintiffs' claims arise "*with reference*" to the sequestered property within the meaning of the Act, Section 9, sub-sec. (e) and was error committed by the Court of Appeals in affirming the decree of the trial court dismissing the complaint on the ground that this claim did not so arise?

(4) Was the denial by the trial court of the plaintiffs' motions to have the New York Receiver of the defendant James' property, choses in action, and equitable interests, brought in and made a party to the suit. Error which required the reversal of the decree by the Court of Appeals affirming the decree dismissing the complaint?

(5) Errors arising on exceptions to rulings on exclusion of evidence.

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(6) Was the petition of the Receiver for leave to intervene in the suit, properly denied by the trial court and properly affirmed by the Court of Appeals upon the construction of sub-section (f) of the Act adopted by it, holding that the Receiver was precluded by the same from being made a party to such equity suit brought under the provisions of Section 9 (a) of the Act, and the court from ordering such intervention?

Assignment of Errors Urged.

I. The Court of Appeals erred in affirming the decree of the trial court holding that the plaintiffs' claim to recover the amount of their judgment with interest out of the sequestered property of the defendant James, judgment-debtor, and for other relief, do not arise "with reference" to the sequestered property within the meaning of the Act as amended, June 5th, 1920.

II. The Court of Appeals erred in affirming the decree of the trial court, holding in effect that to entitle the plaintiffs to any of the relief prayed for, it should show, but was not shown, that there was a specific lien upon the money or property, to bring the case within the provisions of the Act, Section 9 (e) as amended June 5, 1920.

III. The Court of Appeals erred, holding in effect with the trial court, that the rights of the plaintiffs as judgment-creditors of the judgment-debtor James, under the laws of the State of New York, upon the facts alleged in the complaint, to collect their judgment out of the assets of the judgment-debtor, in that state, and to prevent the removal of those assets by her from the state, and to prevent the collection of their said judgment out of such property, were not remedies which gave such security for the judgment as attached to the property in the hands of the Alien Property Custodian, so that the plaintiffs' claim within the meaning of the act arose "with reference" to the property held by the Custodian.

IV. The Court of Appeals erred in holding, that the application made upon the petition of the Receiver of the New York Supreme Court, David Keane, to intervene as successor in interest to the rights of the judgment-debtor, defendant James, to all her sequestered property and interests in the hands of the Custodian and Treasurer; and on the motion of the plaintiffs to join him as defendant in the action, were properly overruled and denied, as matter

of law, upon the ground that sub-section F of Section 9 of the amended Act of June 5th, 1920, precluded the Receiver's intervention as the successor in interests of the right of the judgment-debtor, defendant, or otherwise, upon his own motion or that of the plaintiffs.

V. That the Court of Appeals erred in refusing to consider the other questions raised on the appeal from the final decree and final order of the Supreme Court of the District, filed December 5th, 1923, including the following errors (specified in the Assignment of Errors, Record, pp. 150-151) in excluding evidence offered.

(b) In holding that the French Government did not extend full reciprocal rights to the American citizens in the courts of the French Republic to those granted to French citizens in the courts of the United States in respect to claims of sequestered property.

(c) In excluding certified copies of the official communication of the French Government to the American State Department, to the French Embassy at Washington, dated December 11th, 1922, in a translation of the Department of State (Plaintiffs' Exhibit 11 for identification, Record, pp. 62-63).

(d) In denying the plaintiffs' motion to amend the Bill of Complaint for the purpose of adding David Keane Receiver of the New York Supreme Court as a co-defendant in the suit.

(e) In excluding without examination by the Court, or allowing the same to be marked, and refusing to allow them to be offered in evidence, documents produced in court by the Attorney General under stipulation with the plaintiffs' counsel, in lieu of the subpoena duces tecum. (a′) the claim filed by the within judgment with the Custodian on December 24th, 1920, (b′) All papers produced in court from the file of the Custodian and Attorney General's office under stipulation, and contained in a bundle;

(c′) All letters addressed and sent to the Alien Property Custodian and Treasurer relating to the claim filed by the defendant James; (f′) In refusing to allow the Assistant Attorney General to produce the above mentioned papers in court, and had them in his possession, to be sworn as a witness when called by the plaintiffs' counsel to the stand; (g′, h′, i′, j′, k′) In excluding the laws of the State of New York, specifically mentioned in the Assignment of Errors (Record, p. 151; (l′) In excluding certified copy of the judgment of the United States District Court, Eastern District of New York, in the case of Charles S. Aramstrom v. Elizabeth Pratt de Gasquet James and the Alien Property Custodian, et al. (Plaintiffs' Exhibit 13 for identification); (m′) In excluding the account of the defendant James, filed in the Surrogate's Court of Ulster County, New York on April 17th, 1913, which is the basis of the plaintiffs' judgment in the present suit; (n′) In excluding Plaintiffs' Exhibit 13 (Record, pp. 141-142) after the same had been previously admitted, and refusing to allow the Assistant Attorney General to produce the paper and to be examined under oath as to the same.

VI. Court of Appeals erred in holding in effect that plaintiffs-appellants, did not set forth and prove facts sufficient to entitle them to equitable relief, under Section (a) of the Act.

VII. Court of Appeals erred in affirming the final decree of the District of Columbia, and the final order, dismissing petition of the Receiver, with costs.

VIII. Court of Appeals erred in entering the final decree, December 17, 1923, affirming the decree of the Supreme Court of the District of Columbia with costs, and final order denied the petition of the Receiver of the New York Supreme Court to intervene in the action.

ARGUMENT.

(No. 346)

POINT I.

The claims of the plaintiffs-appellants arose "with reference" to the specific money and property held by the Alien Property Custodian and Treasurer of the United States, within the meaning of the Trading with the Enemy Act, Sec. 9; as well as in fact; and the Court of Appeals of the District erred in affirming the judgment dismissing the complaint, on the ground that the claims did not so arise.

As a matter of fact it is too obvious to admit of discussion, that the claims of the plaintiffs were of a right to, or in, this particular property—and nothing else. They claimed that this, the property of an insolvent judgment-debtor against whom a New York court had awarded them judgments, and which that court was endeavoring to enforce against this very property of the debtor within the state, when it was sequestered and removed from the reach of its powers, should be applied by the Supreme Court of the District of Columbia having exclusive jurisdiction of its application, under the Act, to the satisfaction of their judgments either directly; or by transferring it to the New York Receiver; or returned to the Farmers' Loan & Trust Company from which it was taken; and restored to the jurisdiction of New York when released by this Government; and to restrain its delivery to the absentee judgment-debtor, which was about to take place, in avoidance of their New York judgments.

Whatever the grounds upon which these claims were urged, whether sound or unsound, they all related to this property, and arose "with reference" to it, unless the ordinary and accepted meaning of language is to be disregarded and logical deductions ignored.

Whether legal interpretations can produce a result so at variance with common sense and the rights of judgment-creditors as does the construction placed upon this provision of the Act by the courts below, is the question.

The argument upon which the construction of the learned courts below is sought to be upheld, is that a claim cannot arise with "reference to" the property of the judgment-debtor in the hands of the Custodian sought to be reached in the suit by the judgment-creditors, unless the debt "has *fixed* some right, or title, or equity to the money or other property in the hands of the Alien Property Custodian;" and, "left some ear marks upon it," which it is urged this judgment-debtor has not in the instant case. That is that claims can only arise under this section with reference to *ear marked property.*

But the statute imposes no such qualifications upon the right conferring jurisdiction. The language of the Act is broad and simple, and, without restrictions upon the kind of claims, that the claims thus made shall arise with reference to the property held by the Custodian. It does not even require that it shall arise *out of*, but only, "*with reference to.*"

The appellant does claim, however, that an equitable lien, attached to the property when taken over by the Custodian, and removed from the jurisdiction of the New York court which was pursuing in satisfaction of its judgments.

The learned Court of Appeals, considered that it was bound by its decision in the Banco-Mexicano case (55 D. C., 354, 6 Fed. [2d], 479), affirmed by this court in (262 U. S., 591), and it decided the appeal in this case (No. 346) on the authority of that case, without distinguishing it.

It is a fundamental principle of the rule of judicial precedent as declared by Chief Justice Marshall, that, "the positive authority of a decision is co-extensive only with the facts upon which it is made."

Ogden v. Saunders, 12 Wheaton, 333.

The *Banco Mexicano* case arose out of a claim upon a common debt, made by a Mexican bank for money loaned by it in the City of New York to one of the great German banks during the war, and which was on deposit to its credit in a New York bank at the time it was seized in December, 1917, by the Custodian, as enemy property. It was therefore at the time of its seizure, out and out, enemy property, unmistakably impressed with the hostile character of its belligerent owners' nationality, and available, until its seizure, for the hostile purposes of the German Government in America, which it was the very purpose of the act to prevent, as the opinion points out.

The District Court held that the claim being a *mere common debt*, not reduced to judgment, creating no lien upon the sequestered fund in the hands of the Custodian, *and the claims of the Government of the United States against it for possible damages, etc., not having been determined as yet by Congress*, that it was not a proper claim against the Custodian to be enforced by the courts in the present condition of the law, and that it *was the duty of the Custodian to defend his possession until Congress had determined what the United States Government would do with the property.* The court placed its decision ultimately upon the technical ground that the claim did not properly arise "with reference to" the property in the hands of the Custodian within the meaning of the Act under the particular circumstances of the case.

It would seem to go without saying that the broad and elastic statutory phrase *"with reference to"* can in no case be construed and applied, except in connection with the particular facts of a given case, as the court in its opinion is careful to make clear. The language was advisedly used in the Act with a view to its susceptibility to varied application, as justice and expediency in particular cases might require, leaving a large discretion to the tribunal administering the law in applying it. *"With reference to"* as used in the Act is not a hard and fast term of

mathematical precision, but one of loose and general description, equivalent in common usage to the interchangeable phrases, in *relation* to, in *respect* to, and in *regard* to. (See Century Dictionary.) There is nothing contrary to this in the decision of the U. S. Supreme Court when the opinion is carefully read. What then are the facts in the *James* case which distinguishes it sharply from the *Banco Mexicano* case, and bring it within the terms of the Act?

(1) The Deutsche Bank was a German national having its principal office in Berlin, a formidable financial instrument or agent of the German Government—German in origin, sympathy and hostility.

Madame James on the other hand was an American-born woman and citizen who some years before the war had married a German citizen who after the commencement of the war is said to have divorced her. She was at most a technical alien enemy under the Act, and the property sequestered was her separate estate. The distinction is obviously important in construing and applying the Act with reference to its objects.

(2) Congress has not yet declared what disposition it will make of the sequestered property of German citizens *generally;* or what claims it will require to be satisfied out of it; such as the claims of American citizens arising out of the sinking of the Lusitania and other damages inflicted upon them before and after the United States entered the war. Such sequestered property still retains the character of enemy property in the hands of the Custodian and is still the property of the United States, to do with as it will. Not so, however, as to Madame James' property which was placed in an entirely different category by the amendment of June 5, 1920, to Section 9 (b-23) Congress then declared its purpose with respect to the *repatriation* of the sequestered property

of American women who had married foreign subjects, including Germans, and conferred the power upon the President acting through his representatives to return such sequestered property to them on proper application and proof. And the Custodian acting under this authority and upon the advice of the Attorney General in May, 1922, was proceeding to allow Madame James, the judgment-debtor's claim to the restoration of her sequestered property, if he had not virtually or formally allowed it as the plaintiffs offered evidence to show that it had, which was excluded on the ground of *privilege* (see Assignments of Error, 5 Sub. e and b. Record, pp. 150-151); and it was about to be turned over to her as plaintiffs apprehended in Europe when the suit of Countess de la Mettrie and her brother, Count de Gasquet James, was begun in the Supreme Court of the District of Columbia, and the payment to the judgment-debtor stayed; and thus far prevented from diversion from her judgment-creditors in the State of New York.

The immediate release of $10,000 of income of all of such funds by the Custodian was further provided by the amendment of March 4, 1923 (see Secs. 3 and 23).

There is, therefore, no claim made to this property by the Government of the United States. And it follows, of course, there can be no proper contest between the United States and the judgment-creditors of Madame James, who were prevented from satisfying their judgments out of it by the seizure of the property by the Custodian and their proceedings stayed. All the Government would appear to be properly interested in is the return of the property to those having rightful claim to it through Madame James.

The concluding language of the opinion in *Banco Mexicano* case is that "*It is the duty of the Custodian to defend his possession according to law until Congress has determined what disposition it will make of the property*" has no application to the *James* case, since Con-

gress *has* declared what disposition is to be made of the sequestered property of American women marrying foreigners in Madame James' situation.

And it was upon this ground, as we read the opinion this this court affirmed the dismissal of the complaint (263 U. S., at p. 234).

(3) Another important distinction between the two cases is the fact dwelt upon with so much emphasis in the District Court's opinion in the *Banco Mexicano case*—that the Mexican bank *had not obtained a judgment* against the German bank, and was at most a common creditor of the latter. This the court regarded as an infirmity of the *Mexican Bank* case, which placed it outside of the provisions of the Act respecting the debt-claim of aliens. The opinion said:

> *"This is a plain case of debtor and creditor between the German and Mexican banks."*

In the *James* case the judgment was rendered in 1915 against her for a failure to turn over trust funds, and was sustained on appeal by the highest court of the state.

(4) The opinion further refers to the fact that:

> "There is nothing to indicate that the contract between the two banks (the Mexican bank and the German bank) which placed any limitation upon the disposition which the German bank might make of the borrowed money after it was delivered. It was free to send the money out of the country * * *. The transaction imposed no duty upon the German bank *either contractual or moral, or by commercial custom*, except to pay the loan when due according to law."

This is of especial importance in view of the express purpose of the Act, which was to prevent German money and property from fighting for Germany.

But the case of Madame James is far different in this as in other respects pointed out. The money and property sequestered was not borrowed or acquired by her during the war, but had constituted part of her separate estate inherited from her father, Colonel George Washington Pratt, out of which she had created a voluntary trust for her own benefit for life in the Farmers Loan & Trust Company of New York in 1887. At the time the property was seized by the Custodian in March, 1918, and subsequently, there was outstanding and unpaid a judgment of the Surrogate's Court of Ulster County, N. Y., surcharging her account of executrix of an estate which was under administration in that court, for funds of the estate withheld by her, which belonged in part to the plaintiffs-judgment-creditors, and which the Surrogate's Court retained jurisdiction to collect, by execution, and has ever since been endeavoring to collect. (*See Central Nat. Bank* v. *Stevens*, 169 U. S., 432; *Louther* v. *Louther*, 115 N. Y. App. Div., 307.)

Madame James, the judgment-debtor, therefore—unlike the Deutsche Bank—was not only under a moral and legal obligation not to remove her property from the State of New York to avoid her judgment-creditors, but was forbidden so to do or attempt to do, as all persons were forbidden to assist her in so doing, by the laws, civil and penal, of the State, such acts constituting a crime under Sections 1173-4, etc., of the New York Penal Code.

We understand that the decision in the *Banco Mexicano* case is regarded by Madame James, if not by the former Attorney General, as an authority, authorizing the Custodian to do for her what she cannot do for herself without commiting a crime under the laws of the State of New York, by removing her property from the reach of her creditors by, first, seizing it under the Trading with the Enemy Act; second, staying the creditors by such seizure; third, awarding under the Amendment of

June 5, 1920, restitution of the sequestered property to her directly, she being and residing permanently in Europe; and fourth, by throwing the plaintiffs out of court in the pending action, under the Act, in the District of Columbia, upon the ground that their claim for this interference with the collection of their judgment out of this property, *does not arise with reference to such property.*

If there was an established right to collect the judgment out of any property of the judgment-debtor within the jurisdiction of the court that rendered it; and that right was obstructed in its exercise by the seizure of the property by anybody, it gave rise to a claim of some sort; and if the claim did not arise with reference to property seized it is difficult to state or imagine what it did arise with reference to.

A judgment is something more than a common debt; it is a super-debt or claim to which the immediate right of collection out of the judgment-debtor's property attaches, and the enforcement of which is guaranteed by all the power of the State. So subject is the property of the judgment-debtor to the judgment that it is made a crime, as shown above, to remove it or to assist in removing it from the reach of creditors of the State for the purpose of avoiding their claims. The Penal laws upon this subject are set forth in the preceding Statement.

It is not conceivable that Congress ever intended to immolate the rights of judgment-creditors and State laws upon any narrow and rigid construction of the phrase "with reference to" occurring in the Trading with the Enemy Act, which had no reference to its declared Post War policy in respect to claims of this character.

The opinion in the Banco-Mexicano case, seems to recognize this limitation upon its construction of the Act, when it says:

> *"There are conceivable instances where a plain case of debt might arise with reference to the money or other property taken over by the Custodian."*

The examples suggested by the court are not exclusive, and do not limit the comprehensive nature of the exception.

It may be observed in passing that the court holds that "the word debt is used indifferently in those provisions to designate the obligation of the debtor and the claim of the creditors." Banco-Mexicano Case (55 C. D.) Miller v. Robertson (266 U. S., 243).

The proceeding in the Surrogate's Court of Ulster County, N. Y., was not terminated but was still pending at the time the property was seized.

In the *Central Nat. Bk.* v. *Stevens* (169 U. S., 432) the Supreme Court said:

> "But it has been frequently determined by this court that the jurisdiction of a court is not exhausted by the rendition of the judgment but continues until the judgment shall be satisfied. Thus it was said in *Riggs* v. *Johnson County*, 6 Wall., 186, 'that process subsequent to judgment is as essential to jurisdiction as process antecedent." And in *Army* v. *Supervisors*, 11 Wall., 136, it was said: 'An execution is the end of the law, it gives the successful party the fruits of his judgment (*U. S.* v. *Nourse*, 9 Pet., 8, 28).' But it is scarcely necessary to quote authorities to show that to deprive a court of the power to execute its decrees is essentially to impair its jurisdiction. *Juris effectus in executione consistit.*"

Wegan v. Childs, 41 N. Y., 159, *holding* that a suit is still pending whether it has proceeded to final judgment or not, provided any further judicial may be required in the suit.

Louther v. *Louther*, 115 App. Div., 307 (N. Y.), holds that an action will not be deemed terminated until judgment is satisfied.

Can a Court of Equity disregard the continuing jurisdiction of the Surrogate's Court to enforce obedience to

its decree and the inchoate right of the judgment-creditors in the property of the judgment-debtor, in decreeing the disposition of the seized property in the hands of the Custodian and Treasurer, by holding that their claims against it do not arise with reference to the property?

The judgment (which is a perfected debt) carries with it the right to collect it out of the property of the judgment-debtor. They are practically inseparable. When you interfere or prevent the collection of the debt the cause of action arises out of the debt and the interferences with its satisfaction out of the particular property to be reached—at least "with reference" to it. *In the Banco-Mexicano case there was no judgment*, which was emphasized in the Opinion of the court and the Supreme Court.

This would seem to constitute a claim against the property in the nature of an equitable lien, which the Court of Equity of the District could recognize and enforce, if it was necessary to its jurisdictions.

Part of the sequestered property in the case at bar was a voluntary trust, which was not subject to execution, but after return of executions unsatisfied, could be reached by a judgment-creditor's action.

Schenck v. *Barnes* (156 N. Y., 316) puts this question at rest in New York. *It holds* that a person cannot place his property in trust with remainder over receiving a beneficial interest for life, and thereby put the life estate beyond the reach of his creditors.

Whittmore v. *Equitable Trust Co.*, 162 App. Div., N. Y., 607;
N. Y. Code C. P., Secs. 2463-1391;
Gilman v. *McArdle*, 99 N. Y., 451.

The issuance of executions and their return unsatisfied was a necessary preliminary to a judgment-creditor's suit to reach equitable assets and to commencement of supplementary proceedings.

All means, but the present suit, of collecting the judg-

ment out of the debtor's property were suspended by the sequestration (Act. Sec. 9 [f]).

Such an application of the Act as the court below made results in confiscating the friendly creditor's property instead of the enemy's, which never could have been intended by Congress.

THIS COURT in affirming the dismissal of the complaint in the *Banco Mexicano* case (163 U. S., 591), concludes its Opinion in the following pertinent words:

> "Therefore, the prayer of the bill of complaint should be denied. *We are constrained to this* because we agree with the Court of Appeals *that this suit is, in effect, a suit against the United States*, and all its conditions must obtain."

(The italics are ours.) The intimation is very clear that if the suit had been, in effect, a suit *between private individuals*, in which the United States had no interest, except to turn the property over to such person or persons as the court found to be entitled to it, in short, the interest of a *stakeholder*, that the decision would or might have been different. Otherwise there would seem to have been no occasion for the concluding statement quoted.

And this emphasizes the importance of the testimony offered by the plaintiff to show the fact (if left in doubt), that the sequestered property in the hands of the Custodian and Treasurer was about to be turned over to her, on her application, which had been recommended for allowance, when this suit was commenced; and much of which evidence was excluded by the trial court under plaintiff's exception, which will be noticed under a following point.

Recent decisions of this court, having regard to the Peace treaties concluded and proclaimed August 24th, 1921, and the passing of the Conditions of War, which was the occasion of the Act, and the sequestration of the vast amount of private property still held by the Custodian and

Treasurer of the United States, have adopted a more liberal policy with respect to the Construction of the Act.

> *Miller* v. *Robertson* and *Robert* v. *Miller* (266 U. S., 457);
> *Behnmeyer Co.* v. *Miller* (266 U. S., 243);
> *Swiss Nat. Ins. Co.* v. *Miller* (267 U. S., 73);
> *Matter of Barrett*, 124 N. Y. Misc., 697.

In the latter case, Mr. Justice McReynolds in his very exhaustive dissenting opinion reviews historically the progressive policy of the Government in releasing sequestered property. As disclosed by the Act and its Amendments; the Opinion of Attorney Generals advising Congress in respect to the legislation; the debates on the various measures in Congress; and the decisions of the courts, and their broadening tendency.

In one of the concluding paragraphs of this able Opinion the learned justice says:

> "That a liberal construction should be given to this amendment with a view to carrying out its benevolent purposes, and not a narrow, strained one, which would reflect discredit on the Government."

Although the court's judgment was against the conclusion reached by Justice McReynolds on the facts of this case, it is respectfully submitted that the rule of construction of the amended Act, under present conditions, announced in the paragraph above quoted is eminently sound.

In Miller v. Robertson, Mr. Justice Butler writing for the court said:

> "The purpose of Sec. 9 was to prevent or lessen losses liable to result to intervening persons. This provision is highly remedial and should be liberally construed to effect the purposes of Congress intended to be covered."

It is assumed that the commencement of a suit in the Court of Equity designated by the Act, by a claimant dissatisfied with the actions or inactions of the President upon a claim to properly file, remove the whole controversy into the designated court, equipped with full power to dispose of it as equity may require.

POINT II.

It was made sufficiently to appear from the evidence, that the Republic of France had extended such reciprocal rights to American citizens against sequestered property in that country, in like cases, as the Trading with the Enemy Act, Section 9, as amended June 5, 1920, extends to French citizens. And the contention of the Custodian that no such reciprocal rights had been extended, was against the uncontradicted evidence, and afforded no ground for the dismissal of the complaint, or the affirmance of the judgment.

It may be noted that the Court of Appeals ignored this alleged failure of reciprocity as a ground of affirmance of the decree of dismissal, and placed its decision upon the sole ground that the claim did not arise "with reference" to the sequestered property.

The provision of the Amended Act, Sec. 9 (e) applicable, is as follows:

> "(e) No money or other property shall be returned, nor debt allowed under this section to any person who is a citizen or subject of a nation which was associated with the United States in the prosecution of the War, unless such nation in like cases extends reciprocal rights to citizens of the United States."

It will be observed that what the associated nations are required *to do*, to *extend* reciprocity is not specified by the Amended Act—"unless it *extends*," is the language

used. It does not say, enacts a law by its legislature. That may not be the method by which such nation *extends* privileges to the citizens of other countries. The Century definition of extend is, *to hold out*. Pierre LePaulle, the Government's expert witness, points out the various other ways in which the French Government directs the disposition of sequestered property, by Administrative Decrees, having the force of law, also Circular Letters, Letters of Instruction, etc. (Record, pp. 98, 99, 104, 105).

The best proof of the attitude of the French Republic would seem to be the official acts of its Government communicated to the American Government through some high and recognized official channel.

The French Government speaks to the American Government through the French Ambassador. Pierre LePaulle in his revised deposition, referring to the letter of the French Ambassador to the American Secretary of State of December 11, 1922, offered in evidence and excluded under exceptions (Record, pp. 62-63, thereafter referred to pp. 105-106, 107), says:

> "If officially the statement was made in behalf of the French Government by the Ambassador the only thing for the American Government to do is to believe it. * * * There is no question, but that diplomatic usage accords full credit for the communication which he makes for his Government to the Government to which he is sent. * * * As a question of international law, a statement officially made by an Ambassador is of course the best statement you can have" (Record, pp. 105, 106, 107).

No argument would seem to be necessary on the proposition that the French Ambassador is the accredited representative of his Government in conveying its assurances to the American Government.

The plaintiffs in proof of the extending of reciprocity

by the French Government offered in evidence a certified copy of a communication, received from the French Ambassador by the Department of State under the signature and seal of the Secretary of State, dated the 11th day of December, 1922, with a translation of the same by the Department of State (see Record, pp. 105, 106, 107, Plaintiffs' Exhibit 11 for Identification, Min., p. 102).

This was ruled out by the court upon the information that it then possessed at the time of the power of the French Government to bind itself by such a communication. That since that ruling, the communication was placed before PIERRE LEPAULLE, the expert called by the Custodian, and its legal effect as a matter of French Law and Practice, considered by him on cross and re-cross examination as affecting his direct testimony, and is thus made material. It could not be stricken out of his testimony without affecting his whole direct examination to which it is directly related.

After referring to the case of the plaintiffs pending in this court, and the previous communications exchanged between the French Government and the American Secretary in relation to this claim the communication proceeds as follows:

Communication of the French Government.

"I have the honor to give to your Excellency the assurances that the French Government grants to American nationals reciprocity as it is meant in the Trading with the Enemy Act, Section 9, and that in particular an American national holding a claim against a former enemy whose property was sequestered in France, the validity of the claim having been acknowledged by the judgment of a French court, may seek the execution of that judgment on the property coming under the sequestration up to the assets of the said sequestrated property.

"I should be thankful to your Excellency if you would kindly give notice of this fact to the Attorney General of the United States so that the claims of Mr. Gasquet James and the Countess de la Mettrie may be admitted as early as possible.

Be pleased to accept, Mr. Secretary of State, the assurance of my high consideration (Record, pp. 62-63).

JUSSERAND."

If this does not constitute a formal, authoritative and binding assurance by the French Government, through its highest official source of communication, of the extending of assurance of full reciprocal rights to American citizens as those accorded to French citizens by the Trading with the Enemy Act, it is difficult to imagine what would. Certainly the depositions of French lawyers as to what the French Government would do, or could do, or had done, is not the best evidence, and seems paltry and inconsequential in comparison. PIERRE LEPAULLE was surprised when confronted on his cross examination with this communication which seriously disturbed some of his previous opinions which he endeavored to reconcile with it. He says of this communication, at one place of his cross examination (Record, p. 113).

"If it is considered just as an assurance given to you that the French Government hereby grants now to you reciprocal rights, the French Government is liable toward the American Government for it."

He at first was not inclined to construe it as an assurance. But of course it is not for the witness to construe the communication which is plain and unmistakable in its language. And again he says, when asked if he considers the communication worthless and of no value:

"No, as far as you Americans are concerned this creates the liability of our Government toward your Government and it is certain that the French Government is accustomed to keep its own word. After having made such promise it would take the proper steps to give instructions to the French officials and to the French courts by enacting a law or a decree, and this law or this decree will be binding and put into effect the American rights" (Record, p. 114 [198]).

He further says that a question of law in fact is often settled by circulars and refers to several circulars he had previously quoted, giving the official constructions of the Minister of Justice on such questions of law, and that they have the authority to do so. And again he said:

"Well, if the French Government—if this is taken to be an assurance given to the American Government that reciprocal rights would be granted in the future, it would have taken those steps."

Pierre LePaulle then goes on to say that as a matter of fact the French law is reciprocal—and as he apparently means, irrespective of this communication. He adds:

"What are the rights of the American in France? They are the rights which fall under the three exceptions which I have stated."

When asked finally if he values his own statements as against the official communication of the French Republic and the Cabinet, he becomes somewhat confused apparently, and says:

"I must say that the whole explanation that I have made has shown perfectly well that the rights are reciprocal. They are in accordance with the Trading

with the Enemy Act, which shows that the Frenchman will have the same rights as the American citizen. (He probably means that Americans will have the same rights as Frenchmen.) You give us these rights so these are perfectly reciprocal rights; so it agrees perfectly with what it says here (indicating the law), if instead of saying what the law is, the letter means only that formally and officially the President of the French Republic grants this to the American citizen. I also agree, because such a promise does not grant you any rights that you had not already. I have to acknowledge it is as a treaty, if it is a treaty. Whatever may be the construction you give to this letter, I therefore entirely agree with the statement made by the French Ambassador at Washington" (p. 116).

In the case of *Church* v. *Hubbart* (2 Cranch, 187), which involved the question of the sufficiency of a certificate of a person signing himself "secretary of state of foreign affairs," certifying that a copy of a decree of the Governor of Para, to which it was attached was a true copy, was sufficiently authenticated—and also the question as to whether a consular certificate was admissible to prove the correctness of a translation of the same. In holding that neither authentication was sufficient, Chief Justice MARSHALL, writing for the court, laid down the law upon the subject of proving foreign laws as follows:

"Foreign laws are well understood to be facts which like other facts must be proved to exist before they can be received in a court of justice. The principle that the best testimony shall be required, which the the nature of the thing admits of: or in other words, that no testimony shall be received which presupposes better testimony attainable, by the party who offers it, applies to foreign laws as it does to all other facts.

> The sanction of an oath is required for their establishment, *unless they can be verified by some such high authority that the law respects it not less than the oath of an individual.*"

The plaintiffs-appellants respectfully submit that the formal assurances of extended reciprocity conveyed to the American Government by the French Government, speaking through the communication of the French Ambassador of December 11, 1922, is of greater weight and dignity than the opinion evidence of lawyers as to what it will or can do under such assurance, and is the best evidence.

Pierre LePaulle says that the counsel of state might hold that the President had no power to make such assurances for his Government, just as the courts of the United States may declare an act of the legislature unconstitutional. But the Trading with the Enemy Act has the same weakness; but both will be potent and effective until declared invalid (Record, p. 62).

That the French law without the aid of the assurances conveyed in the communication of the French Ambassador affords full opportunity to American citizens having judgments secured in French courts against Germans to procure their satisfaction in a proper case out of sequestrated property in the hands of the French Custodian, seems to be the final result of Pierre LePaulle's evidence.

A wrong direction was given to the witness's testimony by the first hypothetical question put to him at (Record, pp. 92-93), on his direct examination, which was duly objected to. The question called for the witness's opinion as to whether an American citizen having a judgment of an *American* court against an enemy debtor could make application to the French Government or an official thereof, to have it paid out of sequestered property. The question should have assumed the judgment of a *French* court in favor of an American citizen to make it a parallel to the case at bar, calling for reciprocal

rights of enforcement against sequestrated enemy property, and was therefore irrelevant and misinforming.

This drew from Pierre LePaulle the statement that it would not, because of the general principle of French law —subject, however, to three exceptions—as recognized by Article 297 of the Treaty of Versailles, that a German debtor must be sued in the first instance in his domicile—which simply meant that a judgment recovered in a foreign jurisdiction which did not conform to French national policy would not be enforced by the French Tribunals, the French law not recognizing foreign judgments as conclusive; it being quite different, of course, as to the enforcement of judgments of its own courts. See leading case, *Hilton* v. *Guyot* (159 U. S., 113).

The witness then went on to state what effect the Treaty of Versailles had had upon the disposition of sequestrated enemy property held by the various nations who become parties to the treaty. After the treaty, he says, recourse could not be had to the Custodian, who up to that time had been merely a Custodian or *depository,* but he says:

> "The Germans have recognized by the Treaty of Versailles, this property does not belong any more to the subjects of Germany, and the title was transferred to the different nations in which the property was situated, so this property does not belong any more to him" (Record, p. 86).

This of course is diametrically the opposite of the position of the American Government with respect to sequestered property under the Trading with Enemy Act, as amended June 5, 1920.

He further explains the Clearing House system established by the treaty under Sections 296-297, by which individual relations between debtor and creditor have been eliminated; and the creditor relegated to his application

to the French Clearing House where he presents his claim; the French Clearing House in turn presenting the claim to the German Clearing House, in which there are French representatives; and if allowed the money paid to the French Clearing House, which after a certain amount has been collected, will be applied in certain percentages by it to creditors residing in France. All of which is very interesting and instructive, but has no application to America, which is not a party to the treaty.

Much of the testimony of Pierre LePaulle is based upon the theory that American nationals are bound by the treaty, which our Government repudiated and refused to become party to.

What then was the French law applicable to subject, before the Treaty, and which is still applicable to American citizens making claims in France upon French judgments recovered by them in 1915 upon claims arising before the war?

(1) Pierre LePaulle distinctly states that the remedy given by the (French Civil Code, Article 1961), was not affected by any decrees, circulars or laws made during the war prior to the law of October 7, 1919, which supplemented the Treaty of January 10, 1919. He says:

> "In any case where they could attach the property according to French laws, the French Government could not stop this creditor from attaching such property. *This point has been in controversy a long time, but it was finally admitted they could do so*" (Rec., p. 101).

He also testifies that the laws of France do provide for the collection of judgments out of the property of the judgment-debtor (Record, p. 101).

There seems to have been abundant French law to protect American judgment-creditors in France in their collec-

tion out of the sequestered property of these judgment-debtors irrespective of all laws and executive decrees and circulars prior to October 7, 1919, and is now, unless affected by the Treaty of Versailles and the Law of October 7, last referred.

(2) But considering all these prior decrees and regulations, the witness says that the fundamental prior sequestration law of October 23, 1913, provides among other things for the payment by this Custodian out of *"Passive"* and refers to circular letter of November 3, 1919.

He defines Passive as follows:

> "Passive means there are some people who can get some money out of the Alien Property Custodian."

And he says that "this word 'Passive' is so vague that it has given very large powers to administration officials."

The Three Exceptions:

He goes on to state that there are three exceptions to the general rule, which prevents creditors from proceeding directly against property of enemy debtors in the hands of the French Custodian:

1st Exception: The case where the sequestrated property constitutes all of the German debtor's property, who before the war had his principal establishment in France (Record, pp. 86-87).

2nd Exception: Where the sequestered property was reasonably subject to some pledge as special charge (Record, pp. 87-93).

3rd Exception: Where an *Equitable* basis appears for allowing the claim, such as the creditor's reliance upon the property of the debtor, *and the debt arose before 1914* (Record, p. 89).

The *rule as to date*, as to when the debt arose, he states, is liberally construed by the Custodian in practice and that: *"Under equitable rules we always refer to the date of the original debt*, because it would be too simple to change the date of the debt" (Record, pp. 88, 93, 94, 104, 105).

This the plaintiffs attempted to prove by offering the account filed by the defendant James on April 17, 1913, in which she admits an indebtedness of $21,642.39, subsequently adjudged by the Surrogate's Court to be $236,333 but the court excluded the evidence (Record, pp. 79-80; Assignment of Errors [5], p. 151).

And further he says: "This 3rd Exception has been worked out on an equity basis by the administrative practice of the French Custodian. *It is in the nature of an equitable lien* in working out the French idea of liquidation" (Record, p. 93).

So if the original debt is prior to August 2, 1914, as a question of fairness of equity, the practice of the French Alien Property Custodian is to consider it as the original date of the debt (Record, pp. 80, 88 to 105).

The judgment of the plaintiff was for claims running back seven years before the executrix filed her account in 1913, upon which the large deficiency judgment was rendered by the Surrogate's Court in 1915, and included items running back over the whole period of her executorship.

Such a claim in France would clearly fall within the 3rd Exception referred to by Pierre Le Paulle.

(4) Lifted Sequestration.

The witness refers to another practice which prevails under the French law, both formerly and now. He says:

> "Sometimes, according to some liberal rules, the French Government recognizes that property *technically German* is *substantially French*, and it will turn

> the property over to the French proprietors of that property or take some other proceedings. A foreigner can later recover the amount of his claim out of that property if the sequestration has been lifted or given back to those from whom it has been taken; so that sometimes foreign creditors can recover quite well out of property which has been sequestrated, if later the sequestration has been lifted, and that sometimes does happen."

This would seem to apply directly to the case at bar in view of the lifting of the sequestration upon Madame James' property in the hands of the Custodian and Treasurer under the amendment of June 5, 1920, or otherwise.

No rulings were made by the court upon the objection to portions of Le Paulle's evidence. On the whole his evidence went to show that American citizens securing judgments of French courts did have abundant remedies in France to satisfy them out of sequestered property under conditions similar to the present case; and this is fully confirmed by the deposition of plaintiff's expert.

RENE PELLERIN, a French lawyer (Record, pp. 130-135), whose delayed deposition occasioned so much trouble, makes it clear in his opinion that American claimants, when debts or claims have been duly established, are fully protected by the French law in enforcing them against sequestrated property of their judgment-debtor. He testified (Answer to 11 Interrogative, Record, p. 131):

> "Up to the present, civil law has always been applied to French, allied or neutral creditors unless reciprocity was not guaranteed" (See Answer to 14 Interrogatory, to same effect).

And again in (Answer, p. 13):

> "In no case has a refusal been made on a question of principle, to effect payment to an American

citizen of a claim against an enemy subject whose property has been sequestrated in France."

And again in Answer to Interrogatory 20, Record, page 134:

"There can not be found a single case of refusal on the part of the 'Office des Biens et Interet Prives' of France to effect payment of an American citizen out of proceeds of sequestrated property of a duly established claim."

And in Answer to Interrogatory 17 (Answer 17), he says:

"There are no restrictions in the Treaty of Versailles."

The answer to this 21 Interrogatory shows that all the decrees, circulars, etc., provide for the settlement by the liquidators of the sequestered property in the widest possible spirit, after full proof has been made of the rights of each creditor whether of French, Allied or neutral.

It is to be especially noted that the extending of reciprocal rights refers to the right to *present* claims. There is nothing in the Trading with the Enemy Act which grants anything to a foreign creditor but the right to *present* his claim to the duly constituted Tribunal to have it paid out of the sequestrated property of the debtor, in the discretion of the court sitting as a court of equity.

When the French Government has extended or accorded a similar right to American citizens it has met all the requirements of reciprocity. A decision by this court in this case (which is doubtless being watched with interest by the French Government which has drawn the especial attention of the American Government to it), that France, in spite of its communication of December 11, 1922, has *not* extended reciprocal rights to Americans under the Trading with the Enemy Act, and has denied reciprocity

to France after she has extended such full reciprocity to America, is to be considered in its effect not only upon the plaintiffs, but also upon American claimants in France to sequestrated property in the hands of that Government as well as the effect of such a decision upon Franco-American relations.

POINT III.

(Assignment of Error 16-Rec., p. 5 (M.) 151.

The court erred in excluding plaintiffs' exhibit 14 for identification, being the account of the defendant James filed in the Surrogate's Court of Ulster County on April 13, 1913, which is the basis of the judgment upon which the plaintiffs' claim in the present suit is founded (Plaintiffs' Exhibit. ., see Rec., pp. 79-80).

The evidence was material upon the question of French reciprocity. At the time it was offered the Custodian expert witness Pierre La Paulle, had testified by deposition that one of the cases in which France accorded rights to claimants of sequestered property was when the debt arose prior to 1914, and that the French rule looked to the date when the claim arose rather than, when judgment was entered upon it. He said:

> "So if the original debt is prior to August 2, 1914, as a question of fairness and equity, the practice of the French Alien Property Custodian is to consider the original date of the debt" (Record, pp. 88, 89, 93, 94, 104, 105).

The account filed by Madam James as executrix admitted an indebtedness of $21,642.39, on April 17, 1913, which the court found to be $236,133.

This clearly brought the case within the 3rd Exception

testified to by the witness to his general opinion as to the limits of French reciprocity, and gave the right to creditors to recover their debts out of sequestered property in the hands of the French Custodian. The only ground for excluding it seems to have been the statement of the learned court that it might never read the depositions, and until it was read it was immaterial. The ruling and exception were referred to incidentally in a preceding point (Plaintiffs' Exhibit 14, for Identification, Record, p. 8).

POINT IV.

The plaintiff sought to show at the trial that an attempt was being made by the absentee judgment-debtor James to remove her property (which Congress had declared its purpose to release from the reach of the plaintiffs, her judgment-creditors; and that she was being furthered in this attempt by the action of the Alien Property Custodian, who had allowed her claim to the restitution of the property and was prepared to turn it over to her secretly, out of the State of New York, if the present suit was dismissed. That the evidence offered in support of this allegation, was material and competent and its rejection by the trial court on the objection of the Assistant Attorney General was reversible error (Assignments of Error 5 [e], a', b', c', Record, p. 150 Errors 5 [b], Record, p. 150).

It is conceded that the defendant James had filed her claim for restitution of the sequestered property with the Custodian on December 24, 1920. After an examination by plaintiff's counsel of some of the papers relative to the application and its allowance in the Attorney General's office, the Special Assistant Attorney General in charge of the case, agreed to produce all the papers in

the matter in court, with the same effect as if subpoenaed by a subpoena *duces tecum*—and did so produce them, when an attempt to put certain of them in evidence by the plaintiff's counsel was steadily opposed by the Attorney General, who was sustained throughout by the court on various objections and grounds.

It was of course important to show that the funds in the hands of the Government were funds that the United States had by the Amendment of June 5, 1920, Sec. 9 (b), declared its purpose to relinquish all claims to, as enemy property, and made available, and was about to turn over, to the defendant, James. The Application of Madam James filed December 24, 1920, with the Custodian; the proofs filed in support of her claim to restitution, and the recorded action of the Government upon the Application, were most material on the question of the *status* of the property, whether of the class to which the Government had released its claim, and thus ceased to be a real party in interest, or the class of sequestered enemy property, as to the disposition of which Congress has not yet declared its purpose.

The evidence was not only material on the question of jurisdiction as argued in the preceding point, but was material in showing the attempt of the defendant judgment-debtor to remove her property from the reach of her judgment-creditors through the instrumentality of the Alien Property Custodian and Treasurer, and to obtain a decree of a Court of Equity to accomplish such fraudulent and criminal purpose. This evidence was of the very gist of the suit. The rulings excluding the evidence were varied and difficult to follow.

All the papers referring to the claim of Madam James were at first stated by the Government's counsel to be in court, accompanied by his refusal to produce them unless ordered to do so by the court (Record, p. 64).

There followed a long attempt to get the papers in evidence. The court required plaintiffs' counsel to specify

the particular papers wanted, and counsel began by calling for the defendant's claim application for restitution filed December 24, 1920; then the affidavits and other proofs filed in reference to the claim; and the report filed recommending the allowance of the claim, and various other papers, which he *offered in evidence.*

(See Asst. Error No. 5 [e], a′, b′, c′.) All of which the Government's counsel refused to produce, and finally refused to say whether the papers called for were in court or not, and was sustained by the court. Plaintiffs' counsel then *offered in evidence* all the papers pertaining to the claim which the counsel had in a bundle in court; the court excluded them, upon the ground that it did not appear that the papers specifically called for were in court.

Plaintiffs' counsel then called the Assistant Deputy Attorney General to the witness stand to prove by him what papers he had brought to court under the stipulation, but the learned court refused to have him sworn.

The court finally excluded all the evidence thus offered on the ground of *privilege* (Record, pp. 67-68).

It was not claimed that any Government secret was involved. The Custodian was acting in a judicial capacity upon a claim filed in his office by the defendant. That such a claim was filed on December 24, 1920, was not denied. Why then was the plaintiff not entitled to prove it by putting it in evidence, and every other document relating to the disposition made of it, the same as a court record? The proceedings of the Custodian are not Star Chamber proceedings, and are not privileged (Record, pp. 65-71).

To hold that the vast properties captured during the war were to be disposed *in camera* by Government officials out of court, would constitute a serious departure from American governmental policy as State secrets; they should be available as evidence in the courts of justice when material. We can understand why Madam James should not wish to have her judgment-creditors know what

disposition was being made of the sequestered property until it should be turned over to her, and wish to have it regarded as a "State secret"; but why the Custodian or the Attorney General should wish to so regard it is not so clear.

The ruling excluded all evidence in the possession of the Custodian or Attorney General's possession of claims filed under the Trading with the Enemy Act, or their disposition, without regard to their relevancy and without examination—upon the sweeping ground of *Privilege*. Appellants submit that this is an extension of the rule of privilege seriously prejudicial to the administration of justice and without precedent, and constitutes reversible error (Record [e], pp. 65 to 68, Error, p. 150).

Assignment of Error (Record, 5 [f], pp. 150-151).

The court erred in refusing to allow the Assistant Deputy Attorney General to be sworn and examined in regard to the papers which he had brought to court, which was duly excepted to (Record, pp. 66-67).

Assignment of Error 5 (g) (h) (i) (j) (k).

The court erred in excluding the evidence of the New York Sections 1171 and 1172 of the New York Criminal Code making it a crime for a debtor to remove his property to avoid its being made liable for the payment of his debts or levied upon by execution, etc., and for any one to assist him in so doing; and other provisions of the statutory law of New York with relation to fraudulent transfers and other remedies provided by the Code of Civil Procedure, which were all ruled out as immaterial and irrelevant (Record, pp. 75, 67, 78).

Upon the merits of the case, which is in effect a judgment-creditor's bill under the Trading with the Enemy Act, to prevent a fraudulent transfer of a judgment-

debtor's property it was certainly material to show what the law of another State was, which the absentee defendant-debtor was trying to evade by having the property delivered to her out of the State of New York, and in Europe.

Assignment of Error 17.

For the purpose of showing that the Alien Property Custodian held the sequestered property of Madam James to be returned to her on January 3, 1921, plaintiffs put in evidence a document in the James' Claim (5309) from the Custodian's files which was received and marked Plaintiffs' Exhibit 12 (Record, p. 136—printed pp. 141-142). Subsequently counsel for the Government attempted to add to this document by oral statements not under oath, which plaintiffs' counsel objected to unless the counsel went on the stand and submitted to cross examination, which the learned trial court refused to allow, and excluded the document which had been previously admitted in evidence (Record, pp. 136-140). Exception to the ruling duly appears.

The exhibit so stricken out after its admission in evidence was of great importance as it tended to show that the Custodian had allowed Madam James' claim, as it distinctly refers to "*property to be returned,*" which had been taken over in her name. Its admission broke through the wall of exclusion which the court's rulings had built around the records of the Custodian relating to Madam James' claim to restitution and its allowance, which the Government's counsel hastened to close up, as soon as he discovered what the effect of the document was. The record will be found not to justify any of the grounds upon which with heated declamation the counsel persuaded the court to exclude the document previously admitted. The evidence of this document bore directly upon the basic question, as to whether the contest was in effect between

Madam James and the plaintiffs as the real parties in interest, or between the plaintiffs and the Government of the United States as the real parties in interest, or the Government as a stakeholder; and whether the defendant was making use of the trading with the Enemy Act and the Custodian to remove her New York property from the reach of her creditors.

It is submitted that ruling of the court in the matter constitutes reversible error.

THE RECEIVER'S APPEAL.

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POINT V.

The application of the Receiver of the New York Supreme Court to the Court of the District for leave to intervene in the action, as the successor in interest of the defendant, judgment-debtor James, to the property in the hands of the Custodian, and Treasurer, was improperly denied, and the Court of Appeals erred in affirming the decree of the District Court upon the ground that the Receiver was stayed from such intervention by sub-section (f) of Section 9 of the Act.

The defendant James had filed application with the Custodian for the return of the property to her under the provisions of the Amended Act, on December 24th, 1920 (Stipulation 12, Record, p. 72).

It was alleged in the Receiver's Petition that the claim had been allowed by the President in May, 1921, and the property was about to be turned over to the defendant when the present suit was commenced staying such payment and surrender (Petition, p. 39, fol. 68).

No reason was assigned by the court of the district for denying the application.

The reason for affirming the decree of denial given by the Court of Appeals, is stated in its opinion as follows:

> "This ruling was correct, since the property now in question was already held by the Custodian under the Trading with the Enemy Act, and sub-section (f) of Section 9 of the Act provides that property so held shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court" (Record, p. 147).

The sub-section in full is as follows:

> Section 9 (f) "Except as herein provided, the money or other property conveyed, transferred, assigned, delivered or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court."

It is submitted the construction given to this sub-section by the learned court below was entirely erroneous.

The object of the provision it seems clear, was to relegate claimants to sequestered property to the Tribunals provided by the Act: first the President, on application; and second to the Court of Equity designated in the instant case, the Supreme Court of the District of Columbia. Claimants were not left remediless, but the doors of the Court of Equity were left open to them, and the property was rendered *immune* from attack in other courts, while it remained in the hands of the Custodian.

The learned court failed to give effect to the qualifying words occuring in the first line of sub-section (f) "Except as herein provided."

Section 9 provides a Court of Equity with plenary powers for determining the rights of the claimants, over the President's disposition of the same; and that is the court to which the Receiver made application.

That seems to be all there is to the question.

The Receiver's standing to make the application arose from the following facts.

On the 18th day of June, 1923, David Keane of the City of New York was appointed by the New York Supreme Court Receiver of "all the property, debts, equitable interests, right and things in action, effects and estate" in a proceeding supplementary to execution begun by George Pratt de Gasquet James, in said court (Record, pp. 43-44), and was likewise appointed such Receiver in a similar proceeding brought by Pauline Andreé de la Mettrie in Oneida County, N. Y., by the County Judge of said County on July 28, 1923 (Record, pp. 45-47).

On the 13th day of July, 1923, an order was made by the Special Term of the New York Supreme Court ordering and directing the Receiver, among other things, "to intervene in an action now pending in said Supreme Court of the District of Columbia brought by Pauline Andreé de la Mettrie and George de Gasquet James against Elizabeth Pratt de Gasquet James and others to recover the property of the said Elizabeth Pratt de Gasquet James sequestered by the Alien Property Custodian during the war"; which was the above entitled action (Record, pp. 49-50).

On September 21, 1923, the Receiver filed and served his petition and notice of motion in the Supreme Court of the District of Columbia, praying to be made a party plaintiff or defendant in the said pending cause for the purpose of asserting his rights as Receiver to the sequestered property of the defendant James and for other relief (Record, p. 35).

The said motion was brought on for hearing before Mr. Justice Hoehling and referred by him to Chief Justice McCoy, the justice trying the said cause.

At the resumption of the trial on October 2, 1923, the motion of the Receiver was heard by the learned trial judge and denied, in the following language:

"I shall deny the motion for leave to intervene and you may take take an exception" (Record, p. 64).

A formal order denying the motion was thereafter made and entered on December 17, 1923. The order appealed from (Record, pp. 54-55).

Immediately upon the denial of the Receiver's motion for leave to intervene and at the conclusion of the argument thereon on October 2, 1923, the plaintiffs moved upon the said papers filed, and on their own behalf to amend the amended bill for the purpose of bringing in the Receiver, who had acquired an interest in the sequestered property of Madam James, that such interest might be determined.

This motion was also promptly denied by the court, upon the ground that it did not differ from the Receiver's motion previously denied (Record, p. 64).

The trial was concluded on December 1, 1923 (Record, p. 135).

It appeared then by the Receiver's petition (1) that he had been appointed by the New York Supreme Court, and the County Court of Oneida County as well, and qualified as Receiver in supplementary proceedings of *"all the property, debts, equitable interests, rights and things in action effects and estate, real and personal"* (Record, pp. 39-40): (2) that by the filing of the order the Receiver under the New York law Civil Practice Act 809 became vested with the title to all the property of the judgment-debtor (Record, p. 40); (3) that under the law of the State of New York the Receiver in supplementary proceedings represents not only the judgment-creditors for the purpose of paying their judgments out of the property of the judgment-debtor collected by him, but also the judgment-debtor, for conserving her estate and paying the balance of the same, if any, after payment of the judgment-creditors to the debtor (Record, pp. 41-42): (4) *that upon information and belief, the application of the defendant*

James filed with the Custodian on December 24, 1920, for restitution of her sequestered property in the hands of the Custodian under the Amendment of the Trading with the Enemy Act of June 5, 1920, had been allowed, and the property was about to be turned over to the defendant James when this action was commenced and its payment stayed (Record, p. 39): (5) that the judgment-debtor being absent from America, notice of the application for the order was duly served on her agent and attorney in fact, George M. Weaver (Record, p. 44): (6) that the Supreme Court of New York authorized and directed its said Receiver to make application to the Supreme Court of the District of Columbia to intervene in this action (Record, pp. 49-50, Exhibit C).

Other allegations of the petition, and reply affidavit of J. Noble Hayes shows that the Receiver had acted with due diligence in making the application, in the suspended situation of the case, which was awaiting the return of a commission sent out to France to take testimony (Record, p. 42, Affd. Hayes, pp. 51-54).

No denial of the allegations of the petition has been made, except such as may be inferred from the short reply affidavit of the Special Assistant Attorney General, Dean Stanley, in which he alleges that he has been unable to find any records, which show that the claim of Madam James has been acted upon by anybody *having authority to act* (Record, pp. 50-51) which was not competent evidence.

This affidavit was made on October 2, 1923, the same day on which the papers referring to the claim in a large bundle were brought into court by Assistant Attorney General Stanley under a stipulation which was a substitute for a *subpoena duces tecum*, and which he successfully resisted every effort of plaintiffs' counsel to put in evidence to prove the facts in relation to the claim and its allowance, as opposed to the *conclusion* of his affidavit.

If the Receiver had been permitted to intervene in the suit, can there be any doubt of the power of the court

sitting as a Court of Equity, with the subject matter of the suit, and all the parties in interest before it, to make such disposition of the same as equity required? Including of course the turning over of the property to the Receiver of the New York Court, who stood, in the shoes of the defendant James in respect to her property and claim for which she had filed application in 1921, which, it was alleged, had been allowed and was about to be turned over to her when this suit was commenced. She being a party to the suit would have full opportunity to be heard on the merits; and the plaintiffs would not in all probability oppose such a disposition of the property as would restore it to the jurisdiction of the New York Courts. The Custodian whose proper position would seem to be that of neutrality as between the adverse claimants, would be fully protected by any decree the court might make.

This court said in *Miller* v. *Robertson* (266 U. S., 457):

> "We think sub-section 9 gives now, as the same words gave from the first, the right of recovery to any person never an enemy, or ally of an enemy within the statutory definitions, *Stokes* v. *Wallace*" (supra).

Full power is conferred by the Amended Act, Sec. 9 (b [illegible]) or c) to direct the turning over of the sequestered property without application therefor in the case of an American woman who has married a German citizen, when the sequestered property came from her (Sub-sec. b-3). In such an event, and—

> "Then the President, without any application being made therefor, may order payment, conveyance, transfer, assignment or delivery of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest

therein to which the President shall determine such person entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered or paid over to the Alien Property Custodian."

And see Sub Sec. (c).

That the court is vested with all the powers of a Court of Equity to dispose of the fund to accomplish the ends of justice and equity.

Fowler v. *Custodian* (*supra*);
Stochr v. *Wallace* (255 U. S., 245);
Miller v. *Robertson* (266 U. S., 457;
Behn Meyer Co. v. *Miller* (266 U. S., 243);
Swiss Nat. Ins. Co. v. *Miller* (267 U. S., 72).

Such a power includes that of bringing in necessary parties.

Judge Hand in the *Fowler* case referring to the provisions of the Act requiring that after the commencement of a suit by a claimant the sequestered property shall be retained by the Custodian until final decree, says that he can discover no reason for it "*unless the provision means that after suit is brought exclusive right to determine the ultimate disposition of the property shall be in the court.*"

The Court of Chancery, "that great receptacle of all undefined powers and remedies," is seldom at loss in necessity for a remedy to prevent a total failure of justice when an extraordinary case like that at bar is presented.

The Act refers these controversies to the Courts of Equity designated. It is unthinkable that it should have been the intention of Congress to invoke the powers of a court which it first proceeded to render impotent.

A Court of Equity cannot act, as such, without allowing the full play of all its inherent and constitutional powers. Once its jurisdiction attaches, the principles which govern such courts spring into full life and vigor

and control the cause and direct the relief to be administered. Otherwise it would not be the Court of the Chancellor. *Spiegelberg* v. *Garvan* (260 Fed. R., 302). As was recently said by the New York Court of Appeals in *Bergoritz* v. *Houlberg* (decided March 21, 1921, 230 N. Y., 261):

> "Jurisdiction exists that right may be maintained. Rights are *not* maintained that jurisdiction may exist. The People in establishing the Supreme Court to administer the law did not petrify the law which the court is to administer. *Matter of Stillman*, 139 N. Y., 337; *Clapp* v. *McCabe*, 84 Hun, 379, 135 N. Y., 525, Court Art I, Sec. 16."

Ober v. *Gallagher*, 93 U. S., 199;
Ward v. *Todd*, 103 U. S., 329;
Byers v. *McAuley*, 149 U. S., 623;
Gormley v. *Clark*, 134 U. S., 338;
16 Cyc., 181 and 106 Note C. and cases there cited:
11 Cyc., 847, Note and cases there cited;
Baily v. *Hornthal*, 154 N. Y., 648.

It is equally evident that if this suit were dismissed the property might be turned over to Madam James under her pending application or without any application, anywhere outside of the State of New York and elude thus her judgment-creditors completely, and reach her in Europe, where she could dispose of it with impunity; and that is what the present suit seeks to prevent (Sec. 9b [3] and C).

Two other questions of law presented by the Receiver's motion, and by the present appeal are:

(1) What effect upon the title to the property of a judgment-debtor has the appointment of a Receiver of his property by a New York Court, in proceedings supple-

mentary to execution, under the laws of that State, and generally in the United States, with respect to divesting the title of the judgment-debtor and transferring it to such Receiver?

(2) How far, under American law, will a Receiver of the property of a judgment-debtor, appointed by the courts of one State, be recognized, and his title upheld and enforced, as to property of such debtor located within such other or foreign State?

(1)

The Law of the State of New York, and generally of all the American States, is that the appointment of a Receiver divests the person of whose property, both real and personal, he is appointed such receiver, and vests it in the Receiver.

The Civil Practice Act of the State of New York provides as follows:

> "Section 809. *Vesting of Property in Receiver.*
> The property of the judgment-debtor is vested in a receiver who has duly qualified, from the time of the filing of the Order appointing him or extending his receivership, as the case may be, subject to the following exceptions:
> 1. Real property is vested in the receiver only from the time when the order or a certified copy thereof, as the case may be, is filed with the Clerk of the court where it is situated.
> 2. When the judgment-debtor, where the order is filed resides in another County of the State, his personal property is vested in the receiver only from the time when a copy of the order, certified by the Clerk in whose office it is recorded, is filed with the Clerk of the County where he resides."

The American-English Encyclopedia of Law, Vol. 23, page 1088, states the law of the acquisition of title by a receiver as follows:

> "Under various State Statutes relating to the appointment of receivers of corporations, or the appointment of Receivers in supplementary proceedings, it has been held that the Receiver takes title to both real and personal property merely by virtue of the order of his appointment."

and cases cited in all the States and cases in the Federal Courts. See also:

> *Reynolds* v. *Etna Insurance Co.*, 169 N. Y., 635; *Mulsten* v. *City of N. Y.*, 213 N. Y., 308; *Matter of Holton* v. *Robinson*, 39 App. Div. (N. Y.), 46; *Matter of S. S. T. & B. Co.*, 136 N. Y., 173, and cases there cited.
>
> *People* v. *Cocks*, 162 App. Div. (N. Y.), 453; *Steinert* v. *Van Aiken*, 165 App. Div. (N. Y.), 206; *Matter of Lennox*, 57 App. Div. (N. Y.), 515, affirmed on appeal in 167 N. Y., 623.

Counsel for Madam James, argued in his brief submitted to the Court of Appeals, that Receivers in supplementary proceedings under the New York laws did not possess the powers of Equity-Receivers, to bring suits and apply for recognition in foreign States—*The law is just the contrary.* The case upon which he relies, Boucker C. Co. v Callahan Co. (218 N. Y., 321) merely holds that the Code provisions extending the right of examination of judgment-debtors, to domestic corporation, does not permit the appointment of a Receiver of such corporation in supplementary proceedings, which would permit preferences to the vigilant, which the *corporation* law of the State does not in the distribution of its assets. Gen. Corp. Law (S. [f], O, 6, 112, 134).

The case is not in point at all.

The leading case of *Porter* v. *Williams* (9 N. Y. Court of Appeals, 142), holds that a Receiver in *supplementary proceedings* under the New York Statutes is vested with the title to real and personal property by force of his appointment, without any assignment, and as he represents the creditor as well as the debtor he may maintain an action to set aside a prior fraudulent conveyance. The opinion states that this was the law before the Code, citing *Mann* v. *Pentz*, 2 Standf., Ch. 157.

In the Matter of S. S. T. & B. Co. (136 N. Y., at page 173) the Court of Appeals of New York said:

> "The question of the effect of the appointment of a receiver upon the title to the property of the person or corporation for which he is appointed is not a new one. In *Mann* v. *Pentz*, 2 Sand., Ch. 257, it was said when the appointment of a receiver was completed, the title to all property and effects which were subject to the order vested in him. To the same effect are *Porter* v. *Williams*, 9 N. Y., 142-148, and *Van Alston* v. *Cooke*, 25 N. Y., 489-496 * * * Matter of Christian J. Co., 128 N. Y., 550."

Under the New York Statute as interpreted by its courts, it is the duty of the Receiver to collect and apply the assets of the judgment-debtor under the supervision of the court and apply them to the payment of the judgments of the judgment-creditors, at whose instance and in whose supplementary proceedings he was appointed in order of their diligence.

> *Boucker Contracting Co.* v. *Callahan Co.*, 218 N. Y., 321;
> *Ward* v. *Baker*, 186 App. Div. (N. Y.), 652.

The foregoing authorities seem to establish, beyond question, the rule in New York and the States of the Union generally, of the vesting of the title to property in a Receiver, whether a mere Equity Receiver or a Statutory Receiver.

(II)

The extra territorial effect of an Order appointing a Receiver is not absolute, but depends upon comity, which is uniformly extended, in recognition and support of the Receiver's title, where it does not conflict with the public policy of the foreign state, nor prejudice the rights of its citizens.

The above is the rule prevailing in the courts of the States of the Union generally if not universally.

The question has been much discussed in the American Courts, and considerable difference of opinion existed on it in the earlier decisions and since the case of *Booth* v. *Clark*, 17 How (How. [U. S.]), 322, which held that there was no *right* of recognition of a Receiver appointed by the Courts of one State by the courts of another State under Article IV, Sec. I of the United States Constitution, which provides that:

> "Full faith and credit shall be given in each state to the Public Acts, Records and in judicial Proceedings of every other state," etc.

The case has been since distinguished as not to apply to the recognition of foreign receivers upon the principle of comity, and such is the common practice between the states.

The following authorities clearly support this view of the law of inter-state reciprocity.

The rule is stated in 23 American & Eng. Enc. Law, page 1108, as follows:

> "While receivers have not of right, any extra territorial jurisdiction, receivers appointed by the courts of one state, as a rule, recognized and protected, and their rights enforced as a matter of comity

by the courts of another, when this can be done without conflict with the public policy of the latter state, and without prejudice to the rights and interests of its citizens."

In *Bernheimer* v. *Converse*, 206 U. S., 516, at page 534, the court, Justice Day writing says:

"It is objected that the receiver cannot bring this action, and that *Booth* v. *Clark*, 17 How, 322; *Hale* v. *Allison*, 188 U. S., 56, and *Great Western M. Co.* v. *Haines*, 198 U. S., 581, are cited and relied upon. But in each and all of these cases it was held that a chancery Receiver having no other authority than that which would arise from his appointment as such can not maintain an action in another jurisdiction. In this case the statute confers the right upon the Receiver, as a *quasi assignee* and representative of the creditors, and as such vested with authority to maintain the action. In such cases we think the Receiver may sue in a foreign jurisdiction."

Relfe v. *Rundel*, 103 U. S., 222;
Howarth v. *Angle*, 162 N. Y., 179.

See also:

Burget v. *Robinson*, 123 Fed. Rep. (U. S.), 262;
Finney v. *Guy*, 189 U. S., 335.

In *Howarth* v. *Angle*, 162 N. Y., page 186 (cited with approval in *Bernheimer* v. *Converse*, 206 U. S., 516), the court, by Judge Vann, said:

"While foreign Receivers cannot sue in this state, as matter of right 'still our courts uphold the title of a foreign assignee or Receiver upon the principle of comity. If the title is by virtue of a voluntary conveyance or transfer, it is sustained as against all,

including even domestic creditors, but if it depends upon a foreign statute or judgment it is sustained as against all except domestic creditors. Every remedy is afforded to gather in the assets unless it would interfere with the policy of the state or impair the rights of its own citizens' *Maborn* v. *El. Co.*, 156 N. Y., 196."

Gaines v. *Clark* (51 App. D. C., 71).

In *Barley* v. *Gittings*, 15 D. C., 438, the court after discussing *Booth* v. *Clark* (17 How., 327), said:

"There seems to be no controlling reason why the courts of this jurisdiction, exercising a sound discretion in the application of the rules of inter-state comity, should not upon application permit interventions and suits by such Receivers appointed by state courts when important interests of creditors and others would be subserved, and when to do so, would not contravene the policy of local laws or be detrimental to the interests of domestic creditors."

"Whatever may have been the doctrine of earlier days the decided tendency of later decisions is towards maintenance of the views above expressed. *Burnell* v. *Supreme Setting of Iron Hill*, 161 Mass., 224; *Belden* v. *Hosner*, 101 Mich., 432; *Dumond* v. *Jewett*, 46 La. A., 559; *Gilman* v. *H. R. R. & C. Co.*, 84 Wisc., 60; *Patterson* v. *Lyde*, 112 Ill., 196; *Bank* v. *Lord*, 38 Ohio St., 174; *Castleman* v. *Templeman*, 87 Maryland, 553; *Day* v. *Postal Tel. Co.*, 66 Md., 554; 20 Am. & Eng. Encyc., 242-244, and cases cited. We think therefore that the Virginia Receiver was entitled to intervene in the proceedings below, and it was error to dismiss the petition."

In *Hoyt* v. *Thompson*, 5 N. Y., 320, 340, the N. Y. Court of Appeals, speaking through Ruggles, J., said:

"It is a conceded principle that the laws of a state have no force *proprior vigori* beyond its territorial limits. But the laws of one state are frequently permitted by the courtesy of another to operate in the latter for the promotion of justice. where neither that state nor its citizens will suffer any inconvenience from the application of the foreign law. This courtesy or comity is established from motives of respect for the laws and institutions of foreign countries, and from consideration of mutual utility and advantage."

The foregoing authorities sufficiently state the American law as to inter-state recognition of foreign Receivers, placing the same—where the receivership is not construed as a quasi assignment and therefore treated as absolute—upon the ground of *comity.*

The rule of *international comity* remains to be considered. There would seem to be no good reason why it should differ from comity between the states. However there may be one rule of evidence in the state courts and another in the Federal courts, the one to be applied in a given case, depending upon the system of courts in which the suit or proceeding is brought.

In the leading case of *Hilton* v. *Guyot,* 159 U. S., 113, it was stated: that the rule of reciprocity in giving effect to foreign judgments is a part of international jurisprudence in accordance with which a judgment rendered in a foreign country is allowed the same effect only as the courts of that country allow to the judgments of the country in which the judgment in question is sought to be executed. A judgment rendered in France against a citizen of this country is only *prima facie* evidence of the justice of the plaintiff's claim, in the absence of any statute or treaty on the subject, since by the laws of France, judgments of other countries are reviewable upon the merits.

The rule respecting the appointment of Ancillary Re-

ceivers, when they are necessary, is stated in 23 American & English Encyc. of Law as follows:

> "When a Receiver has been appointed by the courts of one state, the courts of another state may when necessary or proper appoint an Ancillary Receiver. It is as a rule within the discretion of the court of the latter jurisdiction whether to appoint an Ancillary or an independent Receiver of the assets found within the domestic jurisdiction, as it is also discretionary whether if an ancillary Receiver is appointed the court will appoint the person already appointed and acting in the foreign state or some other person selected by the court."

If the Ancillary Receiver appointed is the Receiver of the foreign state, he is, of course, under the control of the court appointing him as such Ancillary Receiver.

It would seem that no stronger case could be presented upon the merits calling for the recognition of the Receiver, and his ancillary appointment. The Supreme Court of the State of New York has sent its Receiver into the Supreme Court of the District of Columbia and asked that court to assist it in preventing the laws of the state and the decree of one of its courts from being circumvented by a judgment-debtor, to whose rights in the property which is the subject of a suit pending therein the Receiver has succeeded, and to prevent its being removed by the debtor from the reach of her judgment-creditors, and in violation of the Penal Law of the state. In such a case it was error, under this great weight of authority to deny the Receiver's Petition to Intervene.

Barley v. *Gittings,* 15 App. D. C., 427, 438;
Credit Co. v. *U. S.,* 177 U. S., 311-315;
Gaines v. *Clark,* 51 App. D. C., 71;
U. S. Trust Co. v. *Chicago Terminal I. R. Co.,* 188 Fed., 292; 110 C. C. A., 270;

Miller v. *Equity Pr.*, Sec. 77, Intervention;
Foster's Fed. Pr., Secs. 261-262;
Davids Ch. P., 287, Note Pomeroy's Remedies, Secs. 411-431;
Beach Eq. Pr., Sec. 571-580;
Fletcher Equity Pl. & C., pages 64, 65, §44;
Miller v. *Robertson U. S. Sup. Co.*, Nov. 17, 1924;
Mo. Pac. Ry. Receivership (268 U. S., 90);
Kuppendorf v. *Hyde* (110 U. S., 276);
Freeman v. *Howe* (24 How., 456);
Loughborough v. *McNevin*, 74 Cal., 250; 14 Pac., 369;
Walker v. *Sanders*, 103 Minn., 124;
Leary v. *U. S.*, 224 U. S., 567;
Bank of Augusta v. *Earle*, 13 Pet., 590;
Smith v. *Gale*, 144 U. S., 517-521.

It will be observed that the interventions of the N. Y. Receiver in the suit as the successor to the title of the defendant judgment-debtor's interest in the sequestered property would have removed the two questions, which were raised against the plaintiffs and upon which the bill was dismissed, to wit, French reciprocity, and as to the claims arising "with reference to such sequestered property" since those questions do not arise under the Act, in the case of an American citizen claimant, such as the Receiver. Sec. 9 (e).

The case was a proper one for joining the Receiver in the suit, both on his application and that of the plaintiffs and the applications were improperly denied.

Leary v. *U. S.*, 224 U. S., 569;
Kuppendorf v. *Hyde*, 110 U. S., 276.

The defendant James counsel makes three objections to the acquisition of the property by the Receiver which he apparently deems insuperable.

The 1st Objection as he stated it in his brief below is that the Receiver could not be vested with title to any claim prior to the date of the first order appointing him, because Section 9 of the Act requires that the debt asserted must be owing to and owned by the claimant prior to Oct. 6, 1917.

The answer to this is that the Receiver is not a "claimant" of the property in the sense of the Statute. He takes his title by operation of law, *and stands in the debtor's shoes,* enforcing the claim she has made against the Custodian. This provision does not apply to a claimant under Sec. 9 b-3 or c, and of course not to the Receiver to whom sub-section (e) does not apply.

The 2nd Objection made is that, "Under the New York "Statute, the Receiver in supplementary proceedings takes "no title to property except from levy and sale under an "execution."

This is a remarkable statement and is not the law of New York at all.

The Receiver may bring suits in all cases to recover the property, and in some cases the court may make a peremptory order for the delivery of the property at the conclusion of the examinations.

Civ. Prac. Act., Section 793, 809.

The 3rd Objection made is that Section 777 of the N. Y. Civil Prac. Act does not authorize the seizure by the Receiver of property exempt from executions. This property is not exempt under the New York law. We have discussed the question above of the effect of Section 9 (f) of the Trading with the Enemy Act and maintained that the effect of that Sub-section is merely to stay collateral attack on sequestered property, and relegate claimants to suits in the Courts of Equity designated by this Act.

Construction of the Act.

The general rule of statutory construction laid down by Justice Miller in the Slaughter House cases is expressed in the following language:

> "But what we do say, and what we wish to be understood, is that in any fair and just construction of any section or phrase of these amendments it is necessary to look to the purpose which we have said was the prevailing spirit of them all, and the evil which they were designed to remedy."

The Trading with the Enemy Act's object was to prevent property from being used to fight the United States or its Allies. It was dictated by the same policy which was advocated in the Roman Senate at the time of the expulsion from Rome of the Tarquins, when they petitioned to be allowed to take their property and its proceeds with them, and a Senator declared that, "the treasure of the Tarquins should be made to fight for the Republic rather than against it."

U. S. v. *Padelford* (9 Wall, 531);
Am. Exchange Bank v. *Palmer* (256 Fed R., 880).

As was said in *Keppleman* v. *Keppleman,* 103 Atl. R., 27:

> "The Act must be construed in the light of its purposes, *first,* to prevent Acts resulting in detriment to the United States in war; and *second, not to permit* or compel Acts resulting in injury to individual aliens without benefit to the U. S."

In *Am. Exchange Bank* v. *Palmer* (256 Fed R., 680), the Court of Appeals said:

> "Realizing that it was impossible to foresee all the questions and contingencies that would arise under

the Act, Congress confided to the U. S. Courts powers of a most comprehensive character in Sec. 17 (Sec. 3115½), which reads as follows:

'That the District Courts of the United States are hereby given jurisdiction to make and enter * * * all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this Act, with a right of appeal from the final decree or order of such court as provided in Sections 128 and 336 of March 3, 1911, entitled An Act to Codify, revise and amend the laws relating to the judiciary.' "

To employ the Act to protect an enemy alien from the judgment of an American Court rendered in favor of citizens of a faithful ally, which accords the fullest protection to American citizens in its courts, is to grossly pervert its purposes.

Miller v. *Robinson*, 266 N. Y., 457;
Behn Meyer v. *Miller, Custodian*, 266 U. S., 263;
Swiss Nat. Ins. Co. v. *Miller*, 267 U. S., 73.

The Relief Prayed For.

The appellants, Pauline Andree de la Mettrie and George Pratt de Gasquet James, pray that the decree of the Court of Appeals of the District of Columbia be reversed, and a new trial ordered with costs.

The appellant, David Keane, Receiver, prays that the judgment the Court of Appeals of the District of Columbia denying his motion to intervene in the action be reversed with costs and the trial court directed to grant such motion, with costs to the appellant.

And the appellants pray for such other and further relief on this appeal as may to this court seem just.

J. NOBLE HAYES,
GUY H. JOHNSON,
Attorneys for Appellants.

WITHDRAWN

FILED
MAY 5 1926
WM. R. STANSBURY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. [redacted] 54

PAULINE ANDRE DE LA METTRIE AND GEORGE PRATT DE GASQUET JAMES, APPELLANTS,

against

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND FRANK WHITE, AS TREASURER OF THE UNITED STATES,

AND

No. [redacted] 55

DAVID KEANE, RECEIVER, APPELLANT,

against

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND FRANK WHITE, AS TREASURER OF THE UNITED STATES,

---

BRIEF ON BEHALF OF ELIZABETH PRATT DE GASQUET JAMES, APPELLEE.

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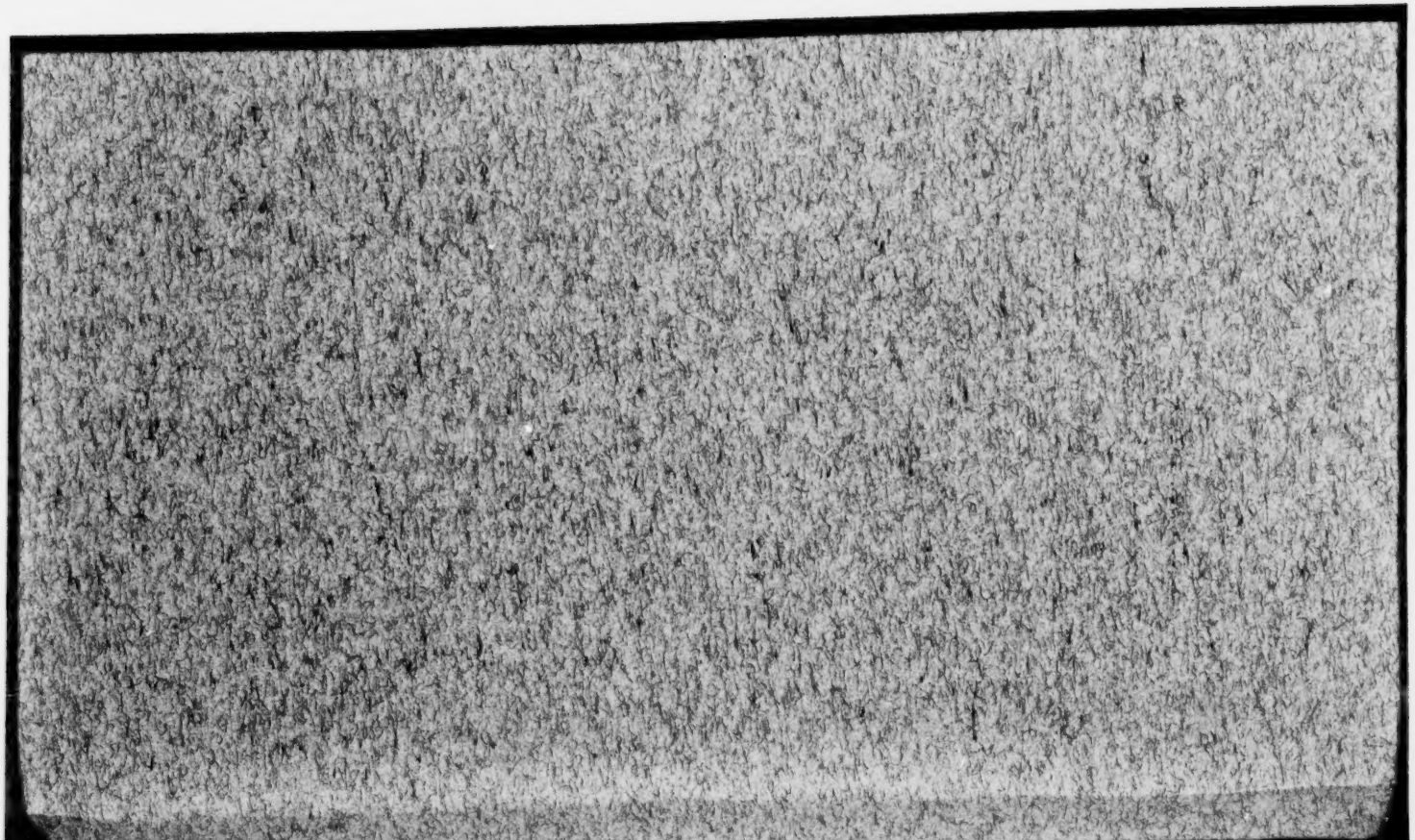

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925.

No. 346.

PAULINE ANDRE DE LA METTRIE AND GEORGE PRATT DE GASQUET JAMES, APPELLANTS,

against

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND FRANK WHITE, AS TREASURER OF THE UNITED STATES,

AND

No. 347.

DAVID KEANE, RECEIVER, APPELLANT,

against

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND FRANK WHITE, AS TREASURER OF THE UNITED STATES,

---

BRIEF ON BEHALF OF ELIZABETH PRATT DE GASQUET JAMES.

Statement of the Case.

There are presented in one record two appeals, one brought by the plaintiffs, De La Mettrie and James, in No. 346 and the other brought by David Keane, as receiver, in No. 347.

The appellants in No. 346 brought a bill in equity in the Supreme Court of the District of Columbia against the Alien Property Custodian and Treasurer of the United States to enforce the collection of the judgments which they had recovered in the Surrogate's Court of Ulster County, in the State of New York, out of property of Elizabeth P. De Gasquet James (their judgment debtor) which had been sequestrated by the Alien Property Custodian. A decree was entered December 5, 1923, by the Supreme Court of the District of Columbia, dismissing the bill of complaint (Record, pp. 16, 17), and from this decree appeal was taken to the Court of Appeals of the District of Columbia, where the decree below was affirmed March 2, 1925.

David Keane was appointed receiver in supplementary proceedings in the State of New York, such proceedings being instituted supplementary to the executions issued by the appellants in No. 346 upon their judgments. Keane as receiver applied to the Supreme Court of the District of Columbia to be made a party to the first-mentioned cause, and his motion for intervention was denied (Record, p. 54), and a motion made by the appellants in No. 346 to amend their pleadings by bringing him in as a party was also denied (Record, p. 64).

On appeal to the Court of Appeals of the District of Columbia, the action of the Supreme Court of the District of Columbia was affirmed March 2, 1925.

From the judgments of affirmance of the Court of Appeals of the District of Columbia the appellants have prosecuted the present appeals.

Appeal of De La Mettrie and James, No. 346.

STATEMENT OF FACTS.

The facts in this case are so clearly stated in the brief submitted on behalf of the Alien Property Custodian and the Treasurer of the United States that a repetition of them here is unnecessary.

Certain other facts are set forth in this brief in connection with the points of the argument.

ARGUMENT.

I.

The Debt Alleged to be Owing to the Appellants Does Not Arise with Reference to the Moneys or Other Property Held by the Alien Property Custodian or the Treasurer of the United States Under the Terms and Provisions of the Trading with the Enemy Act, as Amended.

It is respectfully submitted that the case of *Banco Mexicano* v. *Deutsche Bank,* 263 U. S., 591, affirming the judgment of this Court reported at 289 Fed. Rep., 924, is conclusive on this point.

The argument made in behalf of the other appellees is adopted as the argument in behalf of the appellee James. The facts concerning the origin of the debt and the property seized are set forth in the stipulation which was entered into between the appellants and this appellee (Record, p. 68).

It appears from this stipulation, at the bottom of Record page 68, that Amedee De Gasquet James, the former husband of this appellee and father of the appellants, died on July 28, 1903, in France (Record, pp. 69, 4); that in a proceeding for the judicial settlement of the accounts of appellee James as executrix of her husband's estate, entered in the office of the Surrogate of Ulster County, in the State of New York, on March 21, 1915, judgments were entered against the appellee James and in favor of the appellants. These judgments were subsequently reversed by the Appellate Division of the Supreme Court of the State of New York; the judgment of the Appellate Division was in turn reversed and the Surrogate's decree modified, and as modified affirmed by the Court of Appeals of the State of New York; and thereafter a decree in accordance with the final decision of the Court of Appeals was entered in said Surrogate's Court on November 3, 1917. By the judgments as thus modified each of the appellants was awarded a judgment against this appellee in the sum of $65,133.25 [Record, p. 70 (5)].

In the year 1887 (sixteen years prior to her husband's death), the appellee James, out of her own property, amounting to about $135,000, entered into a trust agreement with The Farmers' Loan and Trust Company, a copy of which is attached to the stipulation (Record, p. 72), by which she reserved to herself an estate for life, in trust, with remainder over to her four children. This was a voluntary trust created out of her own property (Record, pp. 71, 6). It was the interest of appellee under this trust deed and a deposit which consisted of income derived from it and

certain bonds which are of little or no value, but which are not shown to have any connection whatever with the estate of Amedee De Gasquet James, that were seized by the Alien Property Custodian on or about May 20th, 1918 [Record, p. 71 (6)].

It therefore appears affirmatively from this stipulation, which is an admission at least upon the part of the appellants that their claims do not arise with reference to the money or to the property held by the Alien Property Custodian or Treasurer of the United States.

It appears that subsequently to the seizure by the Alien Property Custodian, executions upon these judgments were issued out of the Surrogate's Court of Ulster County. The first of these executions was issued October 18, 1920.

Neither the docketing of the judgments on December 20, 1919 [Record, p. 70 (5)] in New York County, nor the issuance of the executions effected any lien or charge upon the property which the Alien Property Custodian had already seized.

This conclusion has been asserted by the United States Circuit Court of Appeals, Second Circuit, in an appeal made by these same appellants upon the same judgments for leave to intervene in a suit in the United States District Court for the Eastern District of New York, entitled *Aronstam* v. *James*. Three opinions were rendered by the courts upon this application. They will be found reported under the title of *Aronstam* v. *James*, 273 Fed. Rep., 545; 273 Fed. Rep., 548 (being the two in the District Court), and 273 Fed.

Rep., 688 (being the opinion of the Circuit Court of Appeals). In this latter opinion the Court says among other things:

> "Aronstam's suit is under section 9 of the Trading with the Enemy Act (Comp. St. 1918, Com. St. Ann. Supp. 1919 3115½e), and the funds of the respondent Mrs. James are in the treasury of the United States awaiting the determination of it. The petitioners had no lien upon these funds under section 1405 of the Code of Civil Procedure of New York, because they are not chattels nor subject to levy by execution."

So far as any point may be made by the appellants that the action of Mr. Justice Hoehling in denying a motion to dismiss the cause on motion, in some way determined the law of the case, in addition to what the other appellees in their brief may say about this we would call attention to the fact that the appellee James was not a party to this motion. The order denying the motion was entered October 20th, 1921, and her answer was not filed until November 22nd, 1921 (Record, p. 13).

There is a suggestion in appellants' brief that appellee James' property was seized because she was an alien enemy. This is an error. Her property was sequestered because she was in enemy territory—Austria—although she was an American citizen. Her marriage to a German had been annulled prior to the seizure [Record, p. 69 (2)]. In the Aronstam case she was not held to be an "alien enemy" but "to be

an enemy within the meaning of the said Trading with the Enemy Act" (Record, p. 77).

She did not apply to have her property returned under the section of the law referred to on page 4 of appellants' brief, because she could not, she was not at the time of the seizure of her property nor at the time of her application, the wife of a subject or citizen of Germany or Austria-Hungary. The suggestion that the sequestration was about to be lifted (appellants' brief, p. 4), finds no support in the record and the allegation contained in Record on page 42 at folio 74 is denied (Record, p. 50). The stipulation (Record, 72, p. 13), only states that this appellee has filed her claim for the return of her property.

II.

The Dismissal of the Bill Herein by the Trial Court on the Ground that France had Not Extended Reciprocal Rights as Required as a Prerequisite for Such an Action Under the Trading with the Enemy Act, as Amended, is Correct.

This point is very fully argued by the other appellees in this case and we are quite content to rest our argument upon their brief and with the conclusions of the trial court, found printed in the record, pages 136, 137, 138, and 143, where the Court said:

> "I hold, as a matter of fact, that in a case of this kind there was no reciprocity, because as I read the testimony of the two French experts, I believe it is the law of France, and they testify

> to it, that American citizens could not go to France now and establish—not file; anybody can file a claim—but could not go and establish a claim on these facts against the sequestered property in France."

And after reviewing the testimony of Le Paulle and Pellerin, the two experts on French law, continued:

> "So, I find as a fact that while the law of France is that an allied—I suppose we have to call ourselves an 'associated' power—while the citizen of an allied or neutral power has exactly the same rights in the French courts as a Frenchman has, to that extent there is reciprocity, I do not think there is any power in the French Court to let a French citizen recover under those circumstances. In other words, there isn't any reciprocity as to the particular thing that we have under consideration here."

The statement on page 5 of appellants' brief is not complete because the defendant James raised the question as to the accord of reciprocal rights by the Government of France. Issue was duly taken on these allegations in her answer (par. XI, Record, p. 34).

Appeal of David Keane, Receiver, No. 347.

The application of the Receiver David Keane, appellant, for leave to intervene in the pending action and the motion of appellants to bring him in as a party were properly denied.

It appears that by an order of a Justice of the Supreme Court of the State of New York, made on the 18th day of June, 1923, in the matter of the proceedings instituted by George Pratt De Gasquet James, as judgment-creditor, David Keane was appointed receiver in proceedings supplementary to execution on the judgment recovered by the said George Pratt De Gasquet James, which judgment is the basis of the present suit, so far as he is concerned (Record, p. 43).

By order of the County Judge of Oneida County, New York, in proceedings supplementary to execution instituted by Pauline Andree de la Mettrie, as judgment-creditor, this receivership was extended to that proceeding. The order was made on the 28th day of July, 1923, and it was based upon the judgment set out by the appellant, de la Mettrie, as the basis of her suit in the case at bar (Record, p. 45).

Both of these orders were made in what is known as third party proceedings—that is to say, were entered in proceedings instituted against persons supposed to have in their possession property of the judgment-debtor. It is recited in the first order that the judgment-debtor was not served with notice of the application of the order because she was not in the

State of New York and now resides and has for many years resided in Europe (Record, p. 44). A similar recital is made in the order of the County Judge (Record, p. 45).

The denial of the intervention of the receiver may be supported upon either one of three grounds:

(1) The receiver in any event was not vested with title to any claim prior to the date of the first order appointed him receiver—that is to say, June 18, 1923.

Section 9, subdivision (*e*), of the Trading with the Enemy Act provides that no matter who the claimant may be, the debt asserted must "be owing to and owned by the claimant prior to October 6, 1917." Inasmuch as the claim in question was not owned by the receiver prior to the date mentioned, he could not assert any rights in this Court based on such a claim.

(2) Under the New York Statute, the receiver in suplementary proceedings takes no title to property exempt from levy and sale under an execution.

Section 777 of the Civil Practice Act of New York (formerly Section 2463, Code of Civil Procedure) provides:

> "This article (relating to Proceedings Supplementary to Execution) does not authorize the seizure of, or other interference with, any property which is expressly exempt by law from levy and sale by virtue of an execution."

The property involved in the present case is expressly exempt from levy and sale under an execution

under subdivision (*f*) of Section 9 of the Trading with the Enemy Act, which reads as follows:

> "(*f*) Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court."

(3) The receiver in supplementary proceedings appointed in New York State cannot maintain an action in the Supreme Court of the District of Columbia.

The leading case among the Federal decisions is that of *Booth* v. *Clark* (1855), 58 U. S., 322, in which it was held that a receiver appointed under a creditor's bill in the State of New York, could not sue in the United States Circuit Court for the District of Columbia. The court said at page 167:

> "Whatever may be the operation of the decree in respect to the receiver's powers over the property of the debtor within the State of New York, and his right to sue for them there, we do not find anything in the cases in the New York Reports showing the receiver's right to represent the creditor or creditors of the debtor in a foreign jurisdiction. It is true that the receiver in this case is appointed under a statute of the State of New York, but that only makes him an officer of the court for that State. He is a representative of the court, and may, by its direction, take into his possession every kind of property which may be taken in execution, and also that which is equitable, if of a nature to be reduced into possession."

There was added by what is now known as the Code of Procedure of New York, the first part of which was adopted in 1848, a chapter which was entitled Proceedings Supplementary to Execution, which provided a substitute for the bill in chancery. The various provisions of the code authorizing these proceedings were to be considered as a scheme to take the place of the former bill in chancery (*I. & T. N. Bank* v. *Quackenbush*, 143 N. Y., 567, 573).

In the case of *Lynch* v. *Johnson*, 48 N. Y., 27, it was stated that:

> "Proceedings under Sections 292 and 294 of the Code are parts of the same scheme for the collection of debts inaugurated by the Code. These sections furnish a simple substitute for the creditor's bill, as formerly used in Chancery."

The nature of the proceedings supplementary to execution and the position of a receiver therein under the provisions of the statutes of New York have been described in various ways. In the case of *Mulstein Co.* v. *City of New York*, 213 N. Y., 308, at page 314, the court said:

> "The issuing of an execution upon a judgment is a proceeding in the suit, and so are the proceedings supplementary thereto (*Wegman* v. *Childs*, 41 N. Y., 159; *Ward* v. *Roy*, 69 N. Y., 96). Those decisions, it is true, were made prior to the passage of said Section 2433 of the Code of Civil Procedure. None the less I think that as far as the question before us is concerned,

> the proceeding though for some purpose a special proceeding, is still but supplementary to the execution and in aid of the judgment."

Again in *Matter of Boucker Co.* v. *Callahan Co.*, 218 N. Y., 321 at page 324, the Court said:

> "A receiver appointed under the General Corporation Law acts for the benefit of all the creditors of the corporation, who are thus assured that no one will acquire a preference over any other in the distribution of its assets; whereas a receiver in supplementary proceedings represents only the creditor who procured his appointment and such others as may have caused the receivership to be extended to their claims, each becoming entitled to payment in full in the order of diligence."

The receiver in this present case, therefore, occupies no better position than the receiver in the case of *Booth* v. *Clark*.

The case of *Booth* v. *Clark* has been uniformly followed in the Supreme Court of the United States. See the case of *Sterrett* v. *Second National Bank*, 248 U. S., 74, at page 76.

The cases in which the courts of the United States have recognized the right of a foreign receiver to sue in the Federal Courts have been cases of statutory receivers of corporations or analogous instances. We have been unable to find and we do not believe that there is an instance in which the receiver of an individual, appointed in proceedings supplementary to execution or under a creditor's bill, by virtue of his ap-

pointment has been allowed to maintain an action in a Federal court. The only method in which rights can be asserted in those courts are by the original creditors and not by the receivers.

In the foregoing argument we have included everything contained in our brief in the Court of Appeals of the District of Columbia in reference to the receiver's petition of intervention. A consideration will show that the criticism made by appellants at the bottom of page 59 of their brief must be due to misunderstanding of an argument.

Conclusion.

The decree of the Court of Appeals of the District of Columbia affirming the decree dismissing the bill of complaint of the appellants in No. 346 and the order denying the motion of the receiver to intervene in No. 347 should be affirmed.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1920.

No. 356.

PAULINE ANDRE DE LA METTRIE and GEORGE PRATT DE GASQUET JAMES, *Appellants*,

against

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, as Alien Property Custodian, and FRANK WHITE, as Treasurer of the United States,

and

No. 357.

DAVID KRANE, Receiver, *Appellant*,

against

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, as Alien Property Custodian, and FRANK WHITE, as Treasurer of the United States.

SUPPLEMENTAL BRIEF ON BEHALF OF ELIZABETH PRATT DE GASQUET JAMES, APPELLEE.

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IN THE

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1925.

No. 346.

PAULINE ANDRE DE LA METTRIE and GEORGE PRATT DE GASQUET JAMES, Appellants,

against

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, as Alien Property Custodian, and FRANK WHITE, as Treasurer of the United States,

and

No. 347.

DAVID KEANE, Receiver, Appellant,

against

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, as Alien Property Custodian, and FRANK WHITE, as Treasurer of the United States.

SUPPLEMENTAL BRIEF ON BEHALF OF APPELLEE, ELIZABETH PRATT DE GASQUET JAMES.

In addition to the three grounds stated in the main brief on behalf of appellees (pages 10 to 14 inclusive), there are three additional reasons why the present peti-

tion of Keane as Receiver to intervene, and of the appellants, de la Mettrie and George James, to amend their bill of complaint so as to make him a party, would not be allowed even in a Federal Court sitting in the State of New York. It therefore becomes unnecessary to consider whether a New York receiver in supplementary proceedings may exercise his power and sue in a foreign jurisdiction.

(A) In the first place, the intervention of Keane as Receiver in supplementary proceedings would be directly in the teeth of Subdivision (f) of Section 9 of the Trading with the Enemy Act.

Under the New York Statute it is true that a receiver in supplementary proceedings takes the legal title to all the personal property of the debtor, as well as the right to recover by judicial process property transferred by the judgment debtor in fraud of creditors; he is the receiver of the property of the judgment debtor, not of the judgment creditor.

Ward v. *Petrie*, 157 N. Y. 301, 307, 309 (1898)

But any action by the receiver to recover property of the judgment debtor is merely one step towards execution upon it in satisfaction of the judgment of the creditor on whose petition the receiver is appointed.

If Keane as Receiver be allowed to intervene and to charge any of the property in the hands of the Custodian with the judgment owned by the creditors on whose petition he was appointed, such intervention will be granted purely in aid of such judgment by way of execution upon the property of the defendant James in the hands of the Alien Property Custodian. Furthermore, any money or property paid or transferred to Keane as Receiver would be held by him subject to the order of the New York courts which appointed him. But Subdivision (f)

of Section 9 of the Trading with the Enemy Act (C. 241, 41 Stat. 980) provides, as we have already seen in the main brief on behalf of the appellee James,

> "(f) Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court."

The proposed intervention of the Receiver must therefore be denied upon this additional ground.

(B) Secondly, such intervention even in New York would violate Subdivision (e) of Section 9 of the Trading with the Enemy Act (C. 241, 41 Stat. 980). A New York receiver in supplementary proceedings has no greater right to the property of the judgment debtor than the creditor on whose petition he was appointed.

Kennedy v. *Thorp*, 51 N. Y. 174 (1872).

The two judgment creditors, Pauline de la Mettrie and George Pratt de Gasquet James, on whose petition the appellant Keane was appointed receiver, were, at the date of asserting the debt, and still are, admittedly citizens of France (Rec., fol. 122, pp. 68, 69). As we have shown in our main brief (pages 3 to 8 inclusive), the judgment creditors are unable to meet two requirements of Subdivision (e) of Section 9 of the Trading with the Enemy Act (C. 241, 41 Stat. 980) applicable to them, namely:

> 1. that the debt must have arisen with reference to the money or property in the hands of the Custodian or the Treasurer of the United States; and
>
> 2. that the nation of which the claimant is a citizen shall extend reciprocal rights to citizens of the United States.

Subdivision (e) of Section 9 of the Trading with the Enemy Act reads as follows:

> "No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder."

Since the judgment creditors, on whose petition Keane, the Receiver, was appointed, are unable to assert such rights, the Receiver himself cannot do so—for he stands in their shoes. Therefore, the petition of the Receiver for intervention must be denied. Any other conclusion would be but a sign post to a highway leading to the constant evasion of Subdivision (e) of Section 9 of the Trading with the Enemy Act, would render its prohibitions wholly nugatory, and would permit to be accomplished indirectly what is directly forbidden.

(C) An order denying leave to intervene is interlocutory and is not appealable.

It is settled law that the denial of a petition for leave to intervene is an exercise of discretionary power. It is not final in its character and is not appealable.

Credits Commutation Co. v. *United States*, 177 U. S. 311;
Ex parte Cutting, 94 U. S. 14.

CONCLUSION.

Summarizing both our main brief and this supplemental brief as to the intervention of Keane as Receiver, the decision of the Court of Appeals of the District of Columbia, denying the petition of the Receiver to intervene, and of the appellants de la Mettrie and George James to amend their bill of complaint so as to make him a party, should be affirmed, for:

1. To allow Keane as Receiver to urge any claim against the property of Mme. James in the hands of the Alien Property Custodian would violate Subdivision (f) of Section 9 of the Trading with the Enemy Act, which exempts property in the hands of the Custodian from outside judicial interference.

2. Keane as Receiver has no greater rights than the judgment creditors on whose petition he was appointed, and being citizens of France, their rights are limited by two requirements of Subdivision (e) of Section 9 of that Act (neither of which is met):

(a) that the claim must have risen with respect to the property in the hands of the Custodian; and

(b) as to reciprocity.

3. The debt asserted by Keane as Receiver was neither owing to nor owned by the claimant prior to October 6, 1917, as required by Subdivision (e) of Section 9, irrespective of the residence or nationality of the claimant.

4. Keane as Receiver, under Section 777 of the New York Civil Practice Act, takes no title to property in the hands of the Custodian, for it is exempt from execution.

5. Keane, a receiver in supplementary proceedings appointed in the State of New York, cannot maintain an action in the Supreme Court of the District of Columbia.

6. The denial of a motion to intervene is interlocutory and is not appealable.

The decree of the Court of Appeals of the District of Columbia denying the motion of the Receiver to intervene should be affirmed.

Respectfully submitted,

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Supreme Court of the United States

OCTOBER TERM, 1926.

No. 54.

PAULINE ANDRE DE LA METTRIE AND GEORGE PRATT DE GASQUET JAMES, APPELLANTS,

against

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND FRANK WHITE, AS TREASURER OF THE UNITED STATES,

AND

No. 55.

DAVID KEANE, RECEIVER, APPELLANT,

against

ELIZABETH PRATT DE GASQUET JAMES, THOMAS W. MILLER, AS ALIEN PROPERTY CUSTODIAN, AND FRANK WHITE, AS TREASURER OF THE UNITED STATES.

BRIEF ON BEHALF OF ELIZABETH PRATT DE GASQUET JAMES, APPELLEE.

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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1926.

No. 54.

Pauline Andre De La Mettrie and George Pratt De Gasquet James, Appellants,

against

Elizabeth Pratt De Gasquet James, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States

and

No. 55.

David Keane, Receiver, Appellant,

against

Elizabeth Pratt De Gasquet James, Thomas W. Miller, as Alien Property Custodian, and Frank White, as Treasurer of the United States.

BRIEF ON BEHALF OF APPELLEE, ELIZABETH PRATT DE GASQUET JAMES.

Statement of the Case.

There are presented in one record two appeals, one brought by the plaintiffs, De La Mettrie and James, in No. 54 and the other brought by David Keane, as receiver, in No. 55.

The appellants in No. 54 brought a bill in equity in the Supreme Court of the District of Columbia against the Alien Property Custodian and Treasurer of the United States to enforce the collection of the judgments which they had recovered in the Surrogate's Court of Ulster County, in the State of New York, out of property of Elizabeth P. De Gasquet James (their judgment debtor) which had been sequestrated by the Alien Property Custodian. A decree was entered December 5, 1923, by the Supreme Court of the District of Columbia, dismissing the bill of complaint (R. 16, 17), and from this decree appeal was taken to the Court of Appeals of the District of Columbia, where the decree below was affirmed March 2, 1925.

David Keane was appointed receiver in supplementary proceedings in the State of New York, such proceedings being instituted supplementary to the executions issued by the appellants in No. 54 upon their judgments. Keane as receiver applied to the Supreme Court of the District of Columbia to be made a party to the first-mentioned cause, and his motion for intervention was denied (R. 54), and a motion made by the appellants in No. 54 to amend their pleadings by bringing him in as a party was also denied (R. 64).

On appeal to the Court of Appeals of the District of Columbia, the action of the Supreme Court of the District of Columbia was affirmed March 2, 1925.

From the judgments of affirmance of the Court of Appeals of the District of Columbia the appellants have prosecuted the present appeals.

Appeal of De La Mettrie and James, No. 54.

Statement of Facts.

The facts upon which the appellants must rely in order to recover are recited in the amended bill of complaint (R. 2) which was filed in the Supreme Court of

the District of Columbia, the alleged grounds for the jurisdiction of that court being Section 9 of the Trading with the Enemy Act as amended June 5, 1920 (c. 241, 41 Stat. 977).

Many the facts are contained in a stipulation entered into between the appellants and this appellee (R. 68 to 75).

The appellants are citizens and residents of the Republic of France. (R. 2.)

On March 21, 1915, a final decree and judgment were entered in the Surrogate's Court of Ulster County in the State of New York, wherein it was ordered, adjudged, and decreed that the appellee Elizabeth Pratt de Gasquet James pay the sum of $69,754.85 to the present appellant Pauline Andre de la Mettrie, and an equal amount to the appellant George Watson Pratt de Gasquet James. (R. 3.)

After appeals to the appellate division of the Supreme Court of New York and to the Court of Appeals of the State of New York from the said final decree and judgment of the Surrogate's Court, judgment of the Surrogate's Court was affirmed and modified, and as so affirmed and modified was resettled on November 3, 1917, and by decree entered in the office of the Surrogate on that day, the appellee James was ordered to pay to the appellant Pauline Andre de la Mettrie $65,133.25, and an equal amount to the appellant George Watson Pratt de Gasquet James. The judgment of the Surrogate's Court was docketed in the office of the Clerk of the City and County of New York on December 20, 1919. (R. 3.)

On November 5, 1918, the Alien Property Custodian seized and took into his possession certain property of the appellee James in the City of New York, which property was in the possession or under the control of The Farmers' Loan and Trust Company. (Rec. bot. p. 3 and top p. 4.)

On October 18, 1920, execution was issued upon the said judgment of the Surrogate's Court in favor of the appellants to the sheriff of the City and County of New

York, directing him to satisfy the judgment in favor of the appellants out of the property of the said James within the County of New York. This execution was lodged with the sheriff on October 27, 1920. Like executions were issued thereafter, the last execution being dated February 26, 1921, and lodged with the sheriff March 4, 1921. All of these executions were returned by the sheriff unsatisfied. (R. 4.)

In the year 1887 (sixteen years prior to her husband's death), the appellee James, out of her own property, amounting to about $135,000, entered into a trust agreement with The Farmers' Loan and Trust Company, a copy of which is attached to the stipulation (R. 72), by which she reserved to herself an estate for life, in trust, with remainder over to her four children. This was a voluntary trust created out of her own property (R. 71, 6). It was the interest of appellee under this trust deed and a deposit which consisted of income derived from it and certain bonds which are of little or no value, but which are not shown to have any connection whatever with the estate of Amedee De Gasquet James, that were seized by the Alien Property Custodian on or about May 20th, 1918 [R. p. 71 (6)].

On April 22, 1920, the appellants filed their respective notices of claim with the Alien Property Custodian, and on May 29, 1920, filed their applications for the allowance of such claims. The claims of the appellants were disallowed on July 29, 1920. (R. 5 and 6.) Thereafter the claims were again submitted to the President and were, on May 21, 1921, disallowed.

The amended bill of complaint was filed in the Supreme Court of the District of Columbia on July 20, 1921. (R. top 2.)

The bill of complaint prays that the Alien Property Custodian and the Treasurer of the United States be ordered to pay to each of the appellants, Pauline Andre de la Mettrie and George Watson de Gasquet James, the

sum of $65,133.25, out of any money in their possession, which was or is the property of the defendant Elizabeth Pratt de Gasquet James.

It was stipulated that the appellants Mettrie and James filed their respective notices of claim under Section 9 of the Trading with the Enemy Act on or about April 22, 1920, and that upon May 22, 1920, application was made for the allowance of said claims, and that the claims were disallowed on or about July 29, 1920.

Summarized, the facts are simply these: The appellants Mettrie and James, citizens and residents of the Republic of France, are judgment creditors of the appellee James, whose money or other property has been seized and is held by the Alien Property Custodian and the Treasurer of the United States, and the appellants Mettrie and James seek to have the amount of their judgment debts paid from the assets of the appellee James, in the possession of the Custodian and the Treasurer.

Summary of Argument.

Under Section 9 of the Trading with the Enemy Act, as amended, the appellants, French citizens, in order to be entitled to recover any debt due to them by the appellee James, must show both (a) that the debt arose "with reference to the money or other property held by the Alien Property Custodian, or Treasurer of the United States hereunder"; and (b) that the Republic of France "in like case extends reciprocal rights to citizens of the United States." [Section 9, subdivision (e)].

The appellants are unable to meet either of these requirements.

ARGUMENT.

I.

The debt alleged to be owing to the appellants does not arise with reference to the moneys or other property held by the Alien Property Custodian or the Treasurer of the United States under the terms and provisions of the trading with the Enemy Act, as amended.

It is respectfully submitted that the case of *Banco Mexicano* v. *Deutsche Bank*, 263 U. S. 591, affirming the judgment of this Court reported at 289 Fed. 924, is conclusive on this point.

The facts concerning the origin of the debt and the property seized are set forth in the stipulation which was entered into between the appellants and this appellee (R. 68).

It appears from this stipulation, at the bottom of Record page 68, that Amedee De Gasquet James, the former husband of this appellee and father of the appellants, died on July 28, 1903, in France (R. 69, 4); that in a proceeding for the judicial settlement of the accounts of appellee James as executrix of her husband's estate, entered in the office of the Surrogate of Ulster County, in the State of New York, on March 21, 1915, judgments were entered against the appellee James and in favor of the appellants. These judgments were subsequently reversed by the Appellate Division of the Supreme Court of the State of New York; the judgment of the Appellate Division was in turn reversed and the Surrogate's decree modified, and as modified affirmed by the Court of Appeals of the State of New York; and

thereafter a decree in accordance with the final decision of the Court of Appeals was entered in said Surrogate's Court on November 3, 1917. By the judgments as thus modified each of the appellants was awarded a judgment against his appellee in the sum of $65,133.25 [R. p. 70 (5)].

In the year 1887 (16 years prior to her husband's death), the appellee James, out of her own property, created a trust with The Farmers' Loan and Trust Company, preserving to herself, the income thereon for life. The property seized by the Alien Property Custodian on or about May 20, 1918, consisted of this life interest, together with a deposit which comprised income derived from this trust and certain bonds of little or no value. None of this property is shown to have any connection with the estate of Amedee de Gasquet James.

Subdivision (e) of Section 9 of the Trading with the Enemy Act reads as follows:

> "No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; *nor in any event * * * as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder.*" (Italics ours).

It appears affirmatively from the stipulated facts which are admissions at least upon the part of the appellants, that their claims do not arise with reference to the money or to the property held by the Alien Property Custodian or Treasurer of the United States.

It appears that subsequently to the seizure by the Alien Property Custodian, executions upon these judg-

ments were issued out of the Surrogate's Court of Ulster County. The first of these executions was issued October 18, 1920.

Neither the docketing of the judgments on December 20, 1919 [R. 70 (5)] in New York County, nor the issuance of the executions effected any lien or charge upon the property which the Alien Property Custodian had already seized.

This conclusion has been asserted by the United States Circuit Court of Appeals, Second Circuit, in an appeal made by these same appellants upon the same judgments for leave to intervene in a suit in the United States District Court for the Eastern District of New York, entitled *Aronstam* v. *James*. Three opinions were rendered by the courts upon this application. They will be found reported under the title of *Aronstam* v. *James*, 273 Fed. 545; 273 Fed. 548 (being the two in the District Court), and 273 Fed. 688 (being the opinion of the Circuit Court of Appeals). In this latter opinion the Court says among other things:

> "Aronstam's suit is under section 9 of the Trading with the Enemy Act (Comp. St. 1918, Com. St. Ann. Supp. 1919 3115½*e*), and the funds of the respondent Mrs. James are in the treasury of the United States awaiting the determination of it. The petitioners had no lien upon these funds under section 1405 of the Code of Civil Procedure of New York, because they are not chattels nor subject to levy by execution."

So far as any point may be made by the appellants that the action of Mr. Justice Hoehling in denying a motion to dismiss the cause on motion, in some way determined the law of the case, we would call attention to the fact that the appellee James was not a party to this motion. The order denying the motion was entered October 20th, 1921, and her answer was not filed until November 22nd, 1921 (R. 13).

There is a suggestion in appellants' brief that appellee James' property was seized because she was an alien enemy. This is an error. Her property was sequestered because she was in enemy territory—Austria—although she was an American citizen. Her marriage to a German had been annulled prior to the seizure [R. 69 (2)]. In the Aronstam case she was not held to be an "alien enemy" but "to be an enemy within the meaning of the said Trading with the Enemy Act" (R. 77).

She did not apply to have her property returned under the section of the law referred to on page 4 of appellants' brief, because she could not, she was not at the time of the seizure of her property nor at the time of her application, the wife of a subject or citizen of Germany or Austria-Hungary. The suggestion that the sequestration was about to be lifted (appellants' brief, p. 4), finds no support in the record and the allegation contained in Record on page 42 at folio 74 is denied (R. 50). The stipulation (R. 72, p. 13), only states that this appellee has filed her claim for the return of her property.

II.

The Republic of France does not in like case extend reciprocal rights to citizens of the United States.

If this Court decides, as it is submitted it must decide, that the claims of the appellants herein do not arise with reference to the money or other property held by the Alien Property Custodian or the Treasurer, then this question as to the reciprocity granted by France to citizens of the United States in like case will not be reached. However, should this Court decide that these

claims do arise with reference to the money or other property held by the Custodian or the Treasurer, then the next obstacle met by the appellants is the fact that the Republic of France does not extend reciprocal rights to citizens of the United States.

That portion of Subsection (e) of Section 9 of the Trading with the Enemy Act (c. 241, 41 Stat. 980) which is material here is:

> No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States.

This Court will take judicial notice of the fact that the Republic of France was associated with the United States in the prosecution of the war. It is alleged in the amended bill of complaint that the appellants herein are citizens of that country. Hence, the only other question which the Court must determine is whether or not the Republic of France, in like case, extends reciprocal rights to citizens of the United States. It must be apparent that whether or not France extends reciprocal rights to citizens of the United States is a question of French law. The French law is a fact which must be proved. There can be no question as to this. In *Ennis* v. *Smith*, 14 How. 399, at 425, this Court enunciated the rule as follows:

> The written foreign law may be proved, by a copy of the law properly authenticated. The unwritten must be by the parol testimony of experts. As to the manner of authenticating the law, there is no general rule, except this: that no proof shall be received, "which presupposes better testimony behind, and attainable by the party."

> They may be verified by an oath, or by an exemplification of a copy, under the great seal of a State, or, by a copy, proved to be a true copy by a witness who has examined and compared it with the original, or by a certificate of an officer, properly authorized, by law, to give the copy; which certificate must be duly proved.

The rule was further enunciated in *Pierce* v. *Indseth*, 106 U. S. 546, at 551, as follows:

> The general rule as to the proof of foreign laws is that the law which is written, that is, statute law, must be proved by a copy properly authenticated; and that the unwritten law must be proved by the testimony of experts, that is, by those acquainted with the law. *Ennis* v. *Smith*, 14 How. 400.

Of course, the burden of proving the French law was upon the plaintiffs in the courts below. At the first session of the hearing of the case, on February 15, 1923, the appellants attempted to prove the French law by proffering a letter dated December 11, 1922, to the Secretary of State of the United States, and signed "Jusserand"; upon objection, it was excluded by the Court. This letter is printed in full at the bottom of page 62 and on page 63 of the record, and exception is taken to its exclusion by the Court below. An examination of this letter will show that it does not purport to be a certificate as to the authenticity of a particular written law of France. It is rather a statement by M. Jusserand as to what the opinion of the political department of his government is, as to whether or not France extends reciprocal rights to citizens of the United States. This letter was clearly not admissible to prove the law of France within the rule laid down in the *Ennis Case* and the *Pierce Case, supra,* and was, therefore, properly excluded.

Had M. Jusserand been certifying as to a copy of the written law of France, the question might have been a different one. He was doing nothing of the sort. He is simply passing on to the Secretary of State what the political department of the French Government says is the French law. This was mere opinion testimony and would not be admissible.

In their insistence that the letter from M. Jusserand was proper evidence, counsel relied upon the case of *Church* v. *Hubbart*, 2 Cranch, 187, and they quote from the opinion of Chief Justice Marshall in that case.

The Chief Justice at that time recognized the well-established rule that foreign laws are facts which must be proved before they can be received in a court of justice, and he fully recognized the principle that the best testimony shall be required which the nature of the thing admits of, or in other words, that no testimony shall be received which presupposes better testimony obtainable by the party who offers it. The appellants grasp upon a single sentence in the opinion to justify their contention. This sentence is (p. 235):

> The sanction of an oath is required for their establishment, unless they can be verified by some other such high authority that the law respects it not less than the oath of an individual.

An examination of the decision in *Church* v. *Hubbart*, *supra*, will show that the question there arose not with reference to an opinion given by a foreign diplomatic officer as to what the political department of his government said the law of his country was at the particular time, but as to whether or not two edicts and judgments of sequestration of a Portuguese Court were properly authenticated. The edicts were certified by the American counsel at Lisbon, under his official seal, to be copies of the original law of the realm. Chief Justice Marshall, after discussing the rule for the proof of foreign laws,

excluded the edicts, holding that they were not properly proved by the certificate of the American consul. In the same case certain proceedings of a Portuguese Court were offered in evidence, with an English translation certified by the American consul to be correct. The proceedings of the Court were under the seal of his arms by a person who stated himself to be the Secretary of State for foreign affairs. The Court held that neither were admissible, since the seal of the Secretary of State for foreign affairs was not the public seal of the government, although the consul certified that the English copy accompanying the certificate of the Secretary of State for foreign affairs was a true translation of the Portuguese original.

Thus, an examination of the case relied upon by the appellants, together with an acceptance of the rule laid down in the *Ennis* and *Pierce cases*, will indicate clearly that the furthest courts will go in permitting foreign laws to be proved by a certificate is to permit a foreign written statute to be introduced into evidence, when properly certified, and that the courts are very particular as to the manner of such certificate. The courts will not permit a mere letter from a foreign ambassador stating what the political department of his government says is the law of his country to be introduced into evidence. In the present case the letter simply purports to be a letter from the French Ambassador to the Secretary of State. It is true that the State Department certified that this letter had been received and was in the possession of the State Department. This certificate of the State Department, however, has the force only of permitting a copy of the letter to be introduced into evidence without the production of the original, *if* the original itself is admissible into evidence. M. Jusserand's letter is not certified or sworn to in any manner. This disposes of the question as to the propriety of the ex-

clusion of the letter from M. Jusserand to the Secretary of State.

However, further reasons might be assigned as to why the letter was improper to prove the French law and was immaterial and irrelevant to this case. It will be noted that M. Jusserand states (R. 63):

> That in particular an American national holding a claim against a former enemy whose property was sequestered in France, *the validity of the claim having been acknowledged by judgment of a French Court,* may seek the execution of that judgment on the property coming under the sequestration up to the assets of the said sequestrated property. (Italics ours.)

This, of course, means nothing, since it must be determined what claims of American citizens would be recognized as valid by a French Court before it could be determined whether or not the claim would be recognized by France. The materiality of this will be understood when the evidence as to the French law, which was secured and which will be later discussed, is considered.

Furthermore, the appellants did not rely upon this letter for their proof, nor did they stand upon the exclusion. Subsequently the depositions of two French experts upon the French law were put in evidence. One was the deposition of Pierre Lepaulle taken on behalf of the defendants, Miller and White, and the other was the deposition of Rene Pellerin taken on behalf of the plaintiffs in the Court below. No objection whatsoever is raised to the qualifications of M. Lepaulle, and any doubt as to his qualification to testify as to the law of France is put at rest by an examination of those qualifications contained on pages 81 and 82 of the record.

The testimony of M. Lepaulle is quite clear as to the law of France under circumstances such as the present. The real question is whether or not the French Govern-

ment would permit an American citizen in the same situation as the appellants in this case to collect his debt out of the property of his enemy debtor, which property had been sequestered by the French Government. Although appellants in their brierf rely in a large measure upon M. Lepaulle's testimony in their discussion of the question, they consistently omit the real and determining portions of that testimony.

He unmistakably states that the law of France allows to citizens of the United States precisely the same rights with respect to collection of claims out of sequestered enemy property as it allows to its own citizens. (R. 90.) This leads to the question as to what rights the French law allows to French citizens, for under Subsection (e) of Section 9 of the Trading with the Enemy Act the appellants can have no greater rights than the law of France extends to American citizens in like cases.

A general principle laid down as to the French law by M. Lepaulle is:

> The general principle is that the German debtor must be sued where he has his domicile. So that the mere fact that he has property in France will not allow any creditor, even a French creditor, to sue the French Government in order to have his debt paid out of the property. This general principle is written in Article 296 of the Treaty of Versailles * * * and the law of March 10, 1920, which has been made to apply to Article 296 of the Treaty of Versailles. (R. 82.)

A further general principle:

> Now, from September 27, 1914, therefore, up to January 10, 1920, the French Government could not be sued under any circumstances whatever by any creditors of the German citizens whose property had been sequestrated. (R. 84.)

It is also quite clear that the French law does not permit creditors of enemies to secure the payment of debts out of sequestered property unless those debts arose prior to August 2, 1914. As to this M. Lepaulle says:

> This is something absolutely fundamental. That is, that only creditors, prior to the war of 1914, can get paid out of that property. If the date at which the debt had been contracted is a date later than the 2nd of August, 1914, there can be no way whatsoever for the creditor to recover the amount of the debt out of the Alien Property Custodian in France. * * * (R. 87.)
>
> No creditor whose debt has arisen after August, 1914, can sue the French Alien Property Custodian to have his debt paid out of the sequestrated property, no matter how it arose. If it is after August 2, 1914, that is the end of it. (R. 88.)

These general principles having been laid down, M. Lepaulle proceeds to show what debts may be paid out of property sequestered by the French Government. As indicated above, no debts could be paid until after January 20, 1920. (R. 88.) After that date the only debts payable were debts arising prior to August 2, 1914, and those debts must come within one of three categories. These three categories under the French law, as described by M. Lepaulle, are:

(1) Debts may be paid by the French Government out of sequestered property, if the debt is against a German who maintained his principal establishment in France before the war, and had left the territory of France at the beginning of hostilities. (R. 87 and 128.) M. Lepaulle in testifying as to this principle relied upon certain rules laid down in June, 1920, by the Minister of Justice. These are quoted in full on page 126 ff. of the record.

(2) Debts are payable by the French Government out of German sequestered property when the debt constitutes a mortgage, pledge, or lien, or special charge upon the particular property. (R. 87 and 128.)

(3) The above two mentioned categories are laid down in the circular of June 24, 1920. M. Lepaulle, however, stated that there was besides these now a third category of debts which are paid out of sequestered property. He says:

> The third exception has been worked on an equity basis by the administrative practice of the French Alien Property Custodian, and I have obtained that information from the officials of that Bureau in Paris. They will pay creditors prior to August 2, 1914, when the debt arose out of some work connected with the property situated in France. Suppose, for instance, a German having a chateau somewhere in France, and this German employed a gardener, this gardener has worked his garden for one year, his wages have not been paid. He has no lien on the property, and he has no mortgage of any sort. The German has not his principal establishment in France, so he could not sue the French Alien Property Custodian under the first or second exceptions. It is in the nature of an equitable lien which has been worked out in working out the French idea of liquidation. (R. 89.)

From the foregoing the rule as to the French reciprocity may be summarized as follows: France will extend the same rights with respect to sequestered property to citizens of the United States as it extends to its own citizens. Citizens of France can secure payment of debts out of sequestered property only when the debt arose prior to August 2, 1914. Having shown that the debt arose prior to August 2, 1914, it must be further shown that the debt comes within one of three categories:

(1) It must be a debt against a German whose principal establishment was in France prior to the war; or

(2) It must be a debt which constitutes a mortgage, pledge, or lien upon the sequestered property; or

(3) The debt must have arisen because of some act or performance of the creditor with respect to the property.

It is quite clear that the claims of the appellants do not come within the category of claims permitted to be paid by France out of sequestered property. Even assuming that the claim of the appellants arose prior to August 2, 1914, nevertheless the claim has not been brought within one of the three categories. The appellants' claims are not claims against an enemy whose principal establishment was in the United States, nor does it constitute a mortgage, lien, or pledge upon the property, nor does it arise by reason of some service performed with respect to the property. Hence, it has not been shown that France, in like case, extends reciprocal rights to citizens of the United States.

Appellants in their brief assert that the lower Court committed error in excluding certain evidence which would show that the appellants' claim arose prior to August 2, 1914. The appellants' judgment here was secured in 1915. It is true that M. Lepaulle testified that the French law would look to the time the original debt arose. Relying upon this statement of M. Lepaulle, the appellants assert that the Court erred in excluding the testimony which would show that the original debt arose prior to August 2, 1914. Thus appellants say they were deprived of the right to show that their claim fell within the third exception made by M. Lepaulle.

Here again appellants have misconstrued M. Lepaulle's testimony. The testimony of M. Lepaulle was not that any debt arising prior to August 2, 1914, was payable out of sequestered property in France, but that

any debt in order to be paid must not only have arisen prior to August 2, 1914, but further that it must fall within one of the three categories which have been mentioned above. Even though appellants' original claim may have arisen prior to August 2, 1914, under no conceivable construction could it have been held to come within one of the three exceptions made by M. Lepaulle. Hence the evidence which was excluded and which was proffered solely to show that the claim arose prior to August 2, 1914, became immaterial and irrelevant, since even though it was shown that the claim arose prior to August 2, 1914, it was not shown that the claim came within one of the three categories.

The conclusions of the trial court on this point appears on pages 136, 137, 138 and 143 of the record, and are as follows:

> "I hold, as a matter of fact, that in a case of this kind there was no reciprocity, because as I read the testimony of the two French experts, I believe it is the law of France, and they testify to it, that American citizens could not go to France now and establish—not file; anybody can file a claim—but could not go and establish a claim on these facts against the sequestered property in France."

And after reviewing the testimony of M. Lepaulle and M. Pellerin, the two experts on French law, the Court continued:

> "So, I find as a fact that while the law of France is that an allied—I suppose we have to call ourselves an 'associated' power—while the citizen of an allied or neutral power has exactly the same rights in the French courts as a Frenchman has, to that extent there is reciprocity, I do not think there is any power in the French Court to let a French citizen recover under those circumstances. In other words, there isn't any reciprocity as to the particular thing that we have under consideration here."

The statement on page 5 of appellants' brief is not complete because the defendant James raised the question as to the accord of reciprocal rights by the Government of France. Issue was duly taken on these allegations in her answer (par. XI, R. 34).

Appeal of David Keane, Receiver, No. 55.

Summary of Argument.

The appeal should be dismissed, because:

1. Keane as Receiver has no greater rights than the judgment creditors on whose petition he was appointed, and being citizens of France, their rights are limited by two requirements of Subdivision (e) of Section 9 of that Act (neither of which is met):

   (a) that the claim must have risen with respect to the property in the hands of the Custodian; and

   (b) as to reciprocity.

2. To allow Keane as Receiver to urge any claim against the property of Mme. James in the hands of the Alien Property Custodian would violate Subdivision (f) of Section 9 of the Trading with the Enemy Act, which exempts property in the hands of the Custodian from outside judicial interference.

3. The debt asserted by Keane as Receiver was neither owing to nor owned by the claimant prior to October 6, 1917, as required by Subdivision (e) of Section 9, irrespective of the residence or nationality of the claimant.

4. Keane as Receiver, under Section 777 of the New York Civil Practice Act, takes no title to property in the hands of the Custodian, for it is exempt from execution.

5. The denial of a motion to intervene is interlocutory and is not appealable unless the third party would otherwise be left remediless which has not been suggested here.

6. Keane, a receiver in supplementary proceedings appointed in the State of New York, cannot maintain an action in the Supreme Court of the District of Columbia.

The application of the Receiver David Keane, appellant, for leave to intervene in the pending action and the motion of appellants to bring him in as a party were properly denied.

It appears that by an order of a Justice of the Supreme Court of the State of New York, made on the 18th day of June, 1923, in the matter of the proceedings instituted by George Pratt De Gasquet James, as judgment creditor, David Keane was appointed receiver in proceedings supplementary to execution on the judgment recovered by the said George Pratt De Gasquet James, which judgment is the basis of the present suit, so far as he is concerned (R. 43).

By order of the County Judge of Oneida County, New York, in proceedings supplementary to execution instituted by Pauline Andree de la Mettrie, as judgment creditor, this receivership was extended to that proceeding. The order was made on the 28th day of July, 1923, and it was based upon the judgment set out by the appellant, de la Mettrie, as the basis of her suit in the case at bar (R. 45).

Both of these orders were made in what is known as third party proceedings—that is to say, were entered in proceedings instituted against persons supposed to have in their possession property of the judgment debtor. It is recited in the first order that the judgment debtor was not served with notice of the application of the order be-

cause she was not in the State of New York and now resides and has for many years resided in Europe (R. 44). A similar recital is made in the order of the County Judge (R. 45).

The denial of the intervention of the receiver may be supported upon either one of six grounds; each of the first five would prevent intervention even in a Federal court sitting in the State of New York:

(1) In the first place, such intervention even in New York would violate Subdivision (e) of Section 9 of the Trading with the Enemy Act (C. 241, 41 Stat. 980). A New York receiver in supplementary proceedings has no greater right to the property of the judgment debtor than the creditor on whose petition he was appointed.

Kennedy v. *Thorp*, 51 N. Y. 174 (1872).

See also

Boucker v. *Callahan*, 218 N. Y. 321, at p. 324.

The two judgment creditors, Pauline de la Mettrie and George Pratt de Gasquet James, on whose petition the appellant Keane was appointed receiver, were, at the date of asserting the debt, and still are, admittedly citizens of France (Rec., fol. 122, pp. 68, 69). We have already shown (*supra*, pp. 6 to 20) the judgment creditors are unable to meet two requirements of Subdivision (e) of Section 9 of the Trading with the Enemy Act (C. 241, 41 Stat. 980) applicable to them, namely:

1. that the debt must have arisen with reference to the money or property in the hands of the Custodian or the Treasurer of the United States; and

2. that the nation of which the claimant is a citizen shall extend reciprocal rights to citizens of the United States.

Since the judgment creditors, on whose petition Keane, the Receiver, was appointed, are unable to assert such rights, the Receiver himself cannot do so—for he stands in their shoes. Therefore, the petition of the Receiver for intervention must be denied. Any other conclusion would be but a sign post to a highway leading to the constant evasion of Subdivision (e) of Section 9 of the Trading with the Enemy Act, would render its prohibitions wholly nugatory, and would permit to be accomplished indirectly what is directly forbidden.

(2) Secondly, the intervention of Keane as Receiver in supplementary proceedings would be directly in the teeth of Subdivision (f) of Section 9 of the Trading with the Enemy Act.

Under the New York Statute it is true that a receiver in supplementary proceedings takes the legal title to all the personal property of the debtor, as well as the right to recover by judicial process property transferred by the judgment debtor in fraud of creditors; he is the receiver of the property of the judgment debtor, not of the judgment creditor.

Ward v. *Petrie*, 157 N. Y. 301, 307, 309 (1898).

But any action by the receiver to recover property of the judgment debtor is merely one step towards execution upon it in satisfaction of the judgment of the creditor on whose petition the receiver is appointed.

If Keane as Receiver be allowed to intervene and to charge any of the property in the hands of the Custodian with the judgment owned by the creditors on whose petition he was appointed, such intervention will be granted purely in aid of such judgment by way of execution upon the property of the defendant James in the hands of the Alien Property Custodian.

Mulstein Co. v. *City of New York*, 213 N. Y. 308, at p. 314.

Furthermore, any money or property paid or transferred to Keane as Receiver would be held by him subject to the order of the New York courts which appointed him. But Subdivision (f) of Section 9 of the Trading with the Enemy Act (C. 241, 41 Stat. 980) provides,

> "(f) Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, *or subject to any order or decree of any court.*" (Italics ours.)

The proposed intervention of the Receiver must therefore be denied upon this additional ground.

(3) The receiver in any event was not vested with title to any claim prior to the date of the first order appointing him receiver—that is to say, June 18, 1923.

Section 9, subdivision (*e*), of the Trading with the Enemy Act provides that no matter who the claimant may be, the debt asserted must "be owing to and owned by the claimant prior to October 6, 1917." Inasmuch as the claim in question was not owned by the receiver prior to the date mentioned, he could not assert any rights in this Court based on such a claim.

(4) Under the New York Statute, the receiver in supplementary proceedings takes no title to property exempt from levy and sale under an execution.

Section 777 of the Civil Practice Act of New York (formerly Section 2463, Code of Civil Procedure) provides:

> "This article (relating to Proceedings Supplementary to Execution) does not authorize the seizure of, or other interference with, any property which is expressly exempt by law from levy and sale by virtue of an execution."

The property involved in the present case is expressly exempt from levy and sale under an execution under subdivision (*f*) of Section 9 of the Trading with the Enemy Act (*supra*, p. 24).

(5) An order denying leave to intervene is interlocutory and is not appealable.

It is settled law that generally the denial of a petition for leave to intervene is an exercise of discretionary power. It is not final in its character and is not appealable.

> *Credits Commutation Co.* v. *United States*, 177 U. S. 311;
> *Ex parte Cutting*, 94 U. S. 14.

While the general rule is subject to the exception that a denial of a motion to intervene may be appealable if it leaves a third party remediless, it is nowhere suggested in appellants' brief that such a result would follow in the case at bar.

(6) The receiver in supplementary proceedings appointed in New York State cannot maintain an action in the Supreme Court of the District of Columbia.

The leading case among the Federal decisions is that of *Booth* v. *Clark* (1855), 58 U. S., 322, in which it was held that a receiver appointed under a creditor's bill in the State of New York, could not sue in the United States Circuit Court for the District of Columbia. The court said at page 167:

> "Whatever may be the operation of the decree in respect to the receiver's powers over the property of the debtor within the State of New York, and his right to sue for them there, we do not find anything in the cases in the New York Reports showing the receiver's right to represent the creditor or creditors of the debtor in a foreign jurisdiction. It is true that the receiver in this case

> is appointed under a statute of the State of New York, but that only makes him an officer of the court for that State. He is a representative of the court, and may, by its direction, take into his possession every kind of property which may be taken in execution, and also that which is equitable, if of a nature to be reduced into possession."

There was added by what is now known as the Code of Procedure of New York, the first part of which was adopted in 1848, a chapter which was entitled Proceedings Supplementary to Execution, which provided a substitute for the bill in chancery. The various provisions of the code authorizing these proceedings were to be considered as a scheme to take the place of the former bill in chancery (*I. & T. N. Bank* v. *Quackenbush*, 143 N. Y. 567, 573).

In the case of *Lynch* v. *Johnson*, 48 N. Y., 27, it was stated that:

> "Proceedings under Sections 292 and 294 of the Code are parts of the same scheme for the collection of debts inaugurated by the Code. These sections furnish a simple substitute for the creditor's bill, as formerly used in Chancery."

The nature of the proceedings supplementary to execution and the position of a receiver therein under the provisions of the statutes of New York have been described in various ways. In the case of *Mulstein Co.* v. *City of New York*, 213 N. Y., 308, at page 314, the court said:

> "The issuing of an execution upon a judgment is a proceeding in the suit, and so are the proceedings supplementary thereto (*Wegman* v. *Childs*, 41 N. Y., 159; *Ward* v. *Roy*, 69 N. Y., 96). Those decisions, it is true, were made prior to the passage of said Section 2433 of the Code of Civil Procedure. None the less I think that as far as the question before us is concerned, the proceeding

> though for some purpose a special proceeding, is still but supplementary to the execution and in aid of the judgment."

Again in *Matter of Boucker Co.* v. *Callahan Co.*, 218 N. Y., 321, at page 324, the Court said:

> "A receiver appointed under the General Corporation Law acts for the benefit of all the creditors of the corporation, who are thus assured that no one will acquire a preference over any other in the distribution of its assets; whereas a receiver in supplementary proceedings represents only the creditor who procured his appointment and such others as may have caused the receivership to be extended to their claims, each becoming entitled to payment in full in the order of diligence."

The receiver in this present case, therefore, occupies no better position than the receiver in the case of *Booth* v. *Clark*.

The case of *Booth* v. *Clark* has been uniformly followed in the Supreme Court of the United States. See the case of *Sterrett* v. *Second National Bank*, 248 U. S., 74, at page 76.

The cases in which the courts of the United States have recognized the right of a foreign receiver to sue in the Federal Courts have been cases of statutory receivers of corporations or analogous instances. We have been unable to find and we do not believe that there is an instance in which the receiver of an individual, appointed in proceedings supplementary to execution or under a creditor's bill, by virtue of his appointment has been allowed to maintain an action in a Federal court. The only method in which rights can be asserted in those courts are by the original creditors and not by the receivers.

In the foregoing argument we have included everything contained in our brief in the Court of Appeals of

the District of Columbia in reference to the receiver's power to sue outside the State of New York. A consideration will show that the criticism made by appellants at the bottom of page 59 of their brief must be due to misunderstanding of an argument.

CONCLUSION.

The decree of the Court of Appeals of the District of Columbia affirming the decree dismissing the bill of complaint of the appellants in No. 54 and the order denying the motion of the receiver to intervene in No. 55 should be affirmed.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1926

No. 54

PAULINE ANDRE DE LA METTRIE AND GEORGE PRATT de Gasquet James, Appellants

v.

ELIZABETH PRATT DE GASQUET JAMES, HOWARD Sutherland, as Alien Property Custodian, et al.

No. 55

DAVID KEANE, RECEIVER, APPELLANT

v.

ELIZABETH PRATT DE GASQUET JAMES, HOWARD Sutherland, as Alien Property Custodian, et al.

APPEALS FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

BRIEF ON BEHALF OF HOWARD SUTHERLAND, AS ALIEN PROPERTY CUSTODIAN, AND FRANK WHITE, AS TREASURER OF THE UNITED STATES

OPINION BELOW

The opinion of the Court of Appeals of the District of Columbia in these cases is reported in 6 F.

(2d) 479. It appears in the transcript of record at page 145.

JURISDICTION

The judgments of the Court of Appeals of the District of Columbia were entered March 2, 1925. (R. 147.)

The appeal to this Court in case No. 54 has been prosecuted pursuant to paragraph sixth of Section 250 of the Judicial Code (c. 231, 36 Stat. 1159). In case No. 55 appellant insists that the appeal is prosecuted pursuant to the provisions of Section 250 of the Judicial Code (c. 231, 36 Stat. 1159), but these appellees will urge that the Court is without jurisdiction to entertain the appeal in that case. See post, page 12.

CASE NO. 54—APPEAL OF METTRIE AND JAMES

QUESTION PRESENTED

This appeal presents the question whether the appellants, citizens of the Republic of France, may, under Section 9 of the Trading with the Enemy Act, as amended June 5, 1920, collect certain claims against the appellee Elizabeth James from property of said appellee held by the Alien Property Custodian.

STATEMENT OF THE CASE

The appellants are citizens and residents of the Republic of France. (R. 2.)

On March 21, 1915, a final decree and judgment in their favor against the appellee James was entered

in the Surrogate's Court of Ulster County, New York, which decree and judgment after modification and affirmance upon appeal was resettled and entered in the office of the Surrogate on November 3, 1917. Said judgment was docketed in the office of the Clerk of the City and County of New York on December 20, 1919. (R. 3.) The first execution thereon issued October 18, 1920. (R. 4.)

On November 5, 1918, the Alien Property Custodian seized and took into his possession certain property of the defendant James then in the hands or under the control of the Farmers Loan and Trust Company of the City of New York. (R. 3-4.)

The amended bill of complaint does not allege, and no evidence was adduced even tending to show that the judgment forming the basis of appellants' claim or the debt upon which recovery was sought was in any way connected with the money and other property seized by the Alien Property Custodian; in fact, it appears from a stipulation between the attorney for the appellants and the attorney for the appellee James, which was put in evidence by the attorney for the appellants (R. 68), that the claim of the appellants against the appellee James grew out of the settlement of her accounts as executrix of the estate of her deceased husband (R. 70), while the money and other property seized by the Alien Property Custodian consisted of income from a voluntary trust created by the appellee

James years before the death of her husband (R. 69, 71).

After applications to the Alien Property Custodian for the allowance of their claims, which were disallowed, the appellants brought this suit in equity in the Supreme Court of the District of Columbia in July, 1921, claiming to sue under Section 9 of the Trading with the Enemy Act as amended June 5, 1920 (C. 241, 41 Stat. 977), and seeking satisfaction of their claim against the appellee James out of the money and other property seized as belonging to her by the Alien Property Custodian. (R. 2–6.)

The Supreme Court of the District, after evidence had been submitted, entered a final decree dismissing the bill of complaint. (R. 16–17.) The Court of Appeals of the District of Columbia affirmed the decree of the Supreme Court. (R. 147.)

SUMMARY OF ARGUMENT

The appellants, being citizens of France, are precluded by Subsection (e) of Section 9 of the Trading with the Enemy Act (41 Stat. 977, 980), from recovering in this action because:

The debt upon which recovery is sought did not arise "with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States."

No evidence proffered by the appellants was improperly excluded. Excluded evidence offered to show that appellee James is a citizen of the United States, and that her claim to the property in the hands of the Alien Property Custodian has been or was to be allowed, was irrelevant, as the outcome of the case could not have been affected by proving these facts. The United States has prohibited any suit against the Custodian as garnishee or otherwise except under the conditions specified in Section 9 of the Act.

ARGUMENT

I

THE DEBT ALLEGED TO BE OWING TO THE APPELLANTS DOES NOT ARISE "WITH REFERENCE TO THE MONEY OR OTHER PROPERTY HELD BY THE ALIEN PROPERTY CUSTODIAN OR TREASURER OF THE UNITED STATES" WITHIN THE MEANING OF THE TRADING WITH THE ENEMY ACT, AS AMENDED

The question whether the claims of the appellants arose with reference to the money or other property out of which they seek to have it paid, arises by reason of the provisions of Section 9 of the Trading with the Enemy Act as amended June 5, 1920 (c. 241, 41 Stat. 977). Subsection (a) of Section 9 as so amended provides, in so far as material to this case:

> That any person not an enemy or ally of enemy * * * to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered,

> or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may * * * institute a suit in equity in the Supreme Court of the District of Columbia * * * to establish the * * * debt so claimed, and if so established the court shall order the payment, * * * to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States * * *.

Subsection (e) of Section 9 (c. 241, 41 Stat. 980) provides:

> No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder.

This Court has held that Subsection (e) is a limitation upon the general provisions of Subsection (a) of Section 9. (*Banco Mexicano* v.

Deutsche Bank, Miller, as Alien Property Custodian, 263 U. S. 591.)

It is alleged in the bill of complaint that the appellants here are citizens of the Republic of France. In order for them to secure a recovery of their alleged indebtedness they must show that that indebtedness arose *with reference to the money or other property* held by the Alien Property Custodian or the Treasurer of the United States.

This Court defined a debt which arises with reference to money or other property held by the Alien Property Custodian or the Treasurer of the United States, in the case of *Banco Mexicano* v. *Deutsche Bank, Miller, as Alien Property Custodian, supra*, as—

> *A debt that had fixed some right or title or equity to the money or other property held by the Alien Property Custodian or by the Treasurer of the United States* (page 601). (Italics ours.)

This suit is upon a judgment recovered on March 21, 1915, and resettled in accordance with a judgment of the Court of Appeals of New York on November 3, 1917.

The property and money out of which appellants desire payment of their alleged indebtedness was seized by the Alien Property Custodian on November 5, 1918.

It was not until December 20, 1919, that the appellants' judgment was docketed in the office

of the Clerk of the City and County Court of New York, and it was not until October 18, 1920, almost two years after the seizure by the Alien Property Custodian and almost three years after the resettling of the judgment, that the first execution was issued out of the Surrogate's Court. There is nothing in the record, and no effort was made, to prove that the judgment, as resettled on November 3, 1917, had any connection whatsoever with the property afterward seized by the Alien Property Custodian, which was then held by the Farmers Loan & Trust Company.

Appellants seek to distinguish the present case from the *Banco Mexicano case* by saying that in this case the Government is a mere stakeholder, because if the present suit is terminated unfavorably to the appellants the Government will release the property in question to the appellee, Madame James, and they allege that, as a matter of fact, Madame James is endeavoring to secure release of the property out of which appellants seek to recover in order to avoid the payment of her just obligations.

The question whether or not Madame James would be entitled to secure the property here in question were this suit not pending, was not before the court for decision.

The theory of the appellants seems to be that the provisions of Section 9 of the Act, prescribing the conditions under which suits may be brought to satisfy claims out of money in the hands of the

Custodian, only apply to property which is being retained by the Custodian, and not to property ordered released, and as to that, any creditor of the person entitled to the return of the property may by garnishment, creditor's bill, or otherwise, attach the property in the hands of the Custodian. Subsection (f) of Section 9 provides "Except as herein provided the money or other property * * * delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court." No distinction is made in the statute between property the Custodian has a right to retain and that which he is obliged to return. The purpose of the statute, among other things, was to prevent the Custodian from being troubled by garnishments, trustee process, or other like proceedings. So long as he still retains possession, no such suit may be maintained. Creditors of the owners of the property must wait until it leaves the possession of the Custodian before attempting to seize it to satisfy their claims, unless they bring their case under Section 9.

II

NO EVIDENCE PROFERRED BY THE APPELLANTS WAS IMPROPERLY EXCLUDED

Appellants assigned as error the exclusion of certain other evidence by the court at the hearing.

(1) The court excluded certain documents produced in court by the special assistant to the At-

torney General who was defending the case. (R. 64–68.) These documents constituted the entire files of the Attorney General and Alien Property Custodian on the subject of the claim of the appellee James to the return of the property.

It does not appear what these papers were, except that they included correspondence between officers of the United States relating to the matter.

The purpose of the offer of all these documents by appellants, as stated in their brief (page 45), and in the record, was to show the status of the appellee James as an American citizen and to show that her claim to the property had been allowed and the property about to be delivered to her.

It is immaterial for this case whether Madame James was a citizen of the United States or an alien, or whether her claim to the return of the property had been allowed, and the evidence was immaterial for that reason. The United States may not be sued without its consent, as a garnishee or otherwise, and the only consent it has given with respect to property in the hands of the Alien Property Custodian is that contained in Section 9, as amended.

It is also obvious from the record that no proper offer of any document was made and that much of the contents of the files must have been wholly irrelevant to the points sought to be proved, and their offer as a whole was properly rejected.

CASE NO. 55—APPEAL OF DAVID KEANE, RECEIVER

QUESTION PRESENTED

This case presents the question whether the decree of the Court of Appeals of the District of Columbia affirming an order which denied leave to intervene to a receiver of the property of the appellee James is reviewable by this Court, and if so, whether such decree was proper.

STATEMENT OF THE CASE

On June 18, 1923, almost two years after the institution of this suit, upon the motion of J. Noble Hayes, attorney for the appellants in case No. 54, an order was entered in the Supreme Court of the State of New York appointing one David Keane receiver of all the property, debt, equitable interests, rights and things in action, effects and estate, real and personal, of Elizabeth Pratt de Gasquet James, one of the appellees in this case, as judgment-debtor of the appellants, said order being entered in proceedings supplemental to execution. (R. 43–45.) On September 21, 1923, a motion was filed in this case which asked that the said receiver be permitted to intervene in the proceedings and file his petition. (R. 35–43.) The petition of David Keane is verified by Mr. Hayes, attorney for the appellants in case No. 54. (R. 43.) The object, as will appear from the petition (R. 36, 37), was to enable the receiver to secure the delivery to him of the property of Madame James.

At the hearing of the cause the motion of the receiver to intervene was presented by counsel for the appellants in case No. 54, and after full hearing, was denied. (R. 54.) The Court of Appeals of the District of Columbia affirmed the decree of the Supreme Court of the District denying the motion for leave to intervene. (R. 147–148.)

SUMMARY OF ARGUMENT

The appeal in case No. 55 should be dismissed because it is an appeal from an interlocutory order denying leave to intervene.

Furthermore, permitting the receiver to intervene in this case would be in contravention of the specific provisions of Subsection (f) of Section 9 of the Trading with the Enemy Act, under which this suit is brought (c. 241, Stat. 980).

ARGUMENT

I

THE APPEAL IN CASE NO. 55 IS FROM AN INTERLOCUTORY ORDER AND SHOULD BE DISMISSED

The Court of Appeals of the District of Columbia, from whose decree, affirming the order denying leave to intervene, this appeal is taken, under Section 226 of the Code of Laws of the District of Columbia has jurisdiction in its discretion to entertain appeals from interlocutory orders.

That the Court of Appeals passed upon the merits of the receiver's application for leave to intervene, is therefore no evidence that the affirm-

ance of the denial of such application was a final order reviewable by this Court under Section 250 of the Judicial Code.

This Court has repeatedly held that an application for leave to intervene is addressed to the discretion of the court and that an order denying leave to intervene is not such a final order as to furnish the basis for an appeal. *Guion* v. *Liverpool, London & Globe Insurance Co.*, 109 U. S. 173; *Credits Commutation Co.* v. *United States*, 177 U. S. 311; *Ex parte Cutting*, 94 U. S. 14; *City of New York* v. *Consolidated Gas Company*, 253 U. S. 219. This general rule is subject to the limitation that where a third party seeking to intervene will be remediless, unless permitted to do so, he may have an absolute right to intervene and an order denying this right may be appealable. *Credits Commutation Co.* v. *United States supra; Richfield Oil Co.* v. *Western Machinery Co.*, 279 Fed. 852.

It is clear that in the present case the denial of the receiver's petition for leave to intervene did not leave him without a remedy and that the affirmance of such denial by the Court of Appeals is not reviewable by this Court. The receiver was appointed in supplemental proceedings in aid of the enforcement of the judgments obtained by the appellants in case No. 54 against the appellee James, and his petition for leave to intervene expressly states that it is his duty to apply the property of the appellee James to payment of the judgments

of the appellants in case No. 54 and to turn over any balance to the judgment debtor. (R. 41.) If the appellants in case No. 54 should succeed in obtaining the application of the funds held by the Alien Property Custodian to satisfaction of their claim the purpose of the receiver would be accomplished and his intervention would be unnecessary. If the appellants in case No. 54 do not succeed, the receiver may assert any rights to the property which he may have in a new proceeding under Section 9 of the Trading with the Enemy Act as amended by the Act of March 4, 1923 (C. 285, 42 Stat. 1511).

II

THE APPELLANT IN THIS CASE HAS NO STANDING UNDER SECTION 9 OF THE TRADING WITH THE ENEMY ACT

The suit into which the appellant in this case sought to inject himself was instituted under Section 9 of the Trading with the Enemy Act as amended. Subsection (f) of Section 9 provides (c. 241, 41 Stat. 980):

> Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, *or subject to any order or decree of any court.* (Italics ours.)

In the light of this provision of Section 9 the Supreme Court of New York could not make David Keane the receiver of any property while in the

possession of the Alien Property Custodian or the Treasurer of the United States, nor place a receiver in any better position than the creditors he represents.

CONCLUSION

The judgments of the Court of Appeals of the District of Columbia should be affirmed.

WILLIAM D. MITCHELL,
Solicitor General.

IRA LLOYD LETTS,
Assistant Attorney General.

DEAN HILL STANLEY,
Special Assistant to the Attorney General.

NOVEMBER, 1926.

○

(6)

SUPREME COURT OF THE UNITED STATES.

Nos. 54 and 55.—October Term, 1926.

54	Pauline Andre de la Mettrie and George Pratt de Gasquet James, Appellants, *vs.* Elizabeth Pratt de Gasquet James, Thomas W. Miller, as Alien Property Custodian, et al.	Appeals from the Court of Appeals of the District of Columbia.
55	David Keane, Receiver, Appellant, *vs.* Elizabeth Pratt de Gasquet James, Thomas W. Miller, as Alien Property Custodian, et al.	

[January 3, 1927.]

Mr. Justice McReynolds delivered the opinion of the Court.

The challenged decrees were entered March 2, 1925, 6 Fed. (2d) 479. Both causes had been heard upon a single record.

In No. 54 appellants, citizens of France, sought to recover from the Alien Property Custodian certain funds seized by him November 5, 1918, as the property of an alien enemy. They relied upon Section 9, Trading with the Enemy Act, as amended June 5, 1920, c. 241, 41 Stat. 977. The court below held that the claim did not arise with reference to money or property held by the Custodian or by the Treasurer of the United States and affirmed the decree of the trial court which dismissed the bill. *Banco Mexicano* v. *Deutsche Bank*, 263 U. S. 591. Considering the facts disclosed and the definite terms of the statute, this action was clearly right. Subsection (e) of Section 9 provides—

> "No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States;

nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder."

No. 55 is a separate appeal by a receiver. The appellants in No. 54 instituted in the Supreme Court, New York County, supplemental proceedings for the purpose of enforcing judgments which they held against Mrs. James and on June 18, 1923, that court appointed David Keane receiver of all the debtor's property. Thereafter he asked to be made party to cause No. 54, claiming that by reason of such appointment he had an interest in the fund held by the Custodian. The trial court denied this application and upon appeal the court below affirmed that action. The claim is without merit. Subsection (f) of Section 9, Trading with the Enemy Act, provides: "Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court." The appointment of the receiver gave him no better position than the one occupied by the judgment creditors—the New York court had no jurisdiction over funds held by the Custodian.

The decrees below are

Affirmed.

In No. 55 Mr. Justice BRANDEIS, Mr. Justice SANFORD and Mr. Justice STONE concur in the result.

A true copy.

Test:

Clerk, Supreme Court, U. S.